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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona*

Summary

In the present report, the Special Rapporteur on extreme poverty and human rights presents fiscal policy, and particularly taxation policies, as a major determinant in the enjoyment of human rights. Taxation is a key tool when tackling inequality and for generating the resources necessary for poverty reduction and the realization of human rights, and can also be used to foster stronger governance, accountability and participation in public affairs. She outlines relevant human rights obligations to guide and inform State revenue-raising practices, including the duty to use the maximum available resources for the realization of economic, social and cultural rights. She also analyses the questions of how the principles of non-discrimination and equality and the duty of international cooperation and assistance should inform taxation policies at the global and national levels. After assessing how revenue-raising policies and practices can be strengthened through a human rights-based approach, she makes recommendations for fiscal and tax policies that are grounded in human rights and can lead to poverty reduction, sustainable development and the realization of transformative rights.

* Late submission.

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I. Introduction

1. Fiscal policies are a critical tool that States can employ to comply with their international human rights obligations. They can play a major role in achieving equality, tackling discrimination, and strengthening governance and accountability, as well as combating poverty and funding development.

2. Revenue and expenditure are the two main instruments of fiscal policy. In policy and in practice, they are complementary and intertwined. Both functions are critical to realizing human rights, and human right norms apply to all aspects of fiscal policy. Given that government expenditure has been subject to a considerable amount of analysis from the perspective of human rights, however, the Special Rapporteur will focus on the revenue-raising side of fiscal policy, in particular taxation. Although non-tax revenues are also important for most States, taxation is the primary source of public resource generation, besides being also the most sustainable and predictable source of financing for the provision of public goods and services.[1]

3. In the present report, submitted pursuant to Human Rights Council resolution 17/13,,the Special Rapporteur aims to put a human face on debates about tax collection, tax structures and tax abuse. Although taxation policy may seem far removed from the daily problems of the poor, it in fact plays a major role in determining and adjusting levels of inequality in a society and in funding essential services, social protection and poverty reduction measures: it is therefore central to realizing the rights and defining the opportunities of people living in poverty. Mobilizing domestic resources is also a crucial step in the financing of the Millennium Development Goals and the emerging post-2015 sustainable development agenda, as well as in complying with existing commitments to make tax systems more pro-poor.[2]

4. Human rights obligations do not prescribe precise taxation policies, given that States have the discretion to formulate the policies most appropriate to their circumstances. However, a wide range of international treaties, such as the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, impose limits on the discretion of States in the formulation of fiscal policies. In order to ensure that States respect, protect and fulfil rights and to assist them in opening fiscal space towards the realization of human rights, fiscal policies must be guided by the obligations imposed by these treaties.

5. A State breaches its international obligation whenever its actions or omissions are not in conformity with a specifically determined conduct required of it by that obligation;[3] for example, actions or omissions that diminish public revenues by allowing large-scale tax evasion or tax structures that have a disproportionate impact on the poorest segments of the population could constitute violations of human rights obligations, such as the obligation to allocate the maximum available resources to the enjoyment of economic, social and cultural rights or to eliminate discrimination.[4]

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[1] For example, in official development assistance, loans and borrowing, revenue from State-owned enterprises or sale of State assets, and rents, concessions and royalties from natural resource extraction.

[2] See for example the Doha Declaration on Financing for Development (General Assembly resolution 63/239, annex), para. 16.

[3] See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10).

[4] Committee on Economic, Social and Cultural Rights general comment No. 20 (E/C.12/GC/20).

6. The present report focuses mainly on the obligations of States as primarily responsible for human rights obligations. Business enterprises are, however, also crucial actors in the area of fiscal policy. United Nations treaty bodies have repeatedly reiterated their view that States should take steps to prevent violations of human rights outside of their territories as a result of the activities of business enterprises that are incorporated under their laws or that have their main seat or place of business under their jurisdiction.[5] For example, States should take measures to ensure that business enterprises that the State is in a position to regulate, including legal, accounting and other specialized firms that assist in tax abuse, do not participate in or facilitate tax abuse or illicit financial flows, given that they have a detrimental impact on the realization of economic, social and cultural rights.[6]

7. Moreover, under the Guiding Principles on Business and Human Rights,[7] business enterprises also have a responsibility to respect human rights, which covers the full range of rights listed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the eight core conventions of the International Labour Organization (ILO) (principle 12). Business practices that avoid taxation may breach their responsibility to respect insofar as such actions have a negative human rights impact (principle 13) – which indeed they may – as will be further explored below. In addition, business enterprises that knowingly avoid paying tax are purposefully depriving countries of the resources they need to fulfil their human rights obligations.

8. In the present report, the Special Rapporteur explains the scope and content of human rights principles and obligations relevant to the formulation of revenue-raising policies. She elucidates the minimum requirements with which a State must comply in order to fulfil these principles and obligations. After clarifying the crucial functions of tax with regard to human rights, she examines different tax measures and practices from a human rights perspective. The Special Rapporteur concludes the report with recommendations for tax policies most beneficial for the enjoyment of human rights.

9. In order to prepare the report, the Special Rapporteur addressed a questionnaire to States and other stakeholders in which she requested information on their national fiscal policies.[8] The Special Rapporteur also convened an expert meeting, in collaboration with the Friedrich Ebert Foundation (Geneva), the Center of Concern, Christian Aid and MISEREOR, hosted by the Office of the United Nations High Commissioner for Human Rights on 16 and 17 September 2013.

10. The Special Rapporteur expresses her gratitude to all States that submitted information, and to the experts, United Nations agencies and civil society organizations that supported this process and assisted in the preparation of the report, in particular the Center of Concern, the Center for Economic and Social Rights and other members of the Righting Finance Initiative.

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[5] See CRC/C/KOR/CO/3-4, E/C.12/DEU/CO/5 and CCPR/C/DEU/CO/6.

[6] Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights Principles, principles 24 and 25.

[7] A/HRC/17/31.

[8] Questionnaire responses were received from Argentina, Azerbaijan, Bosnia and Herzegovina, Burkina Faso, Chile, Ecuador, Estonia, Finland, Germany, Greece, Iraq, Lebanon, Lithuania, the Netherlands, Paraguay, Portugal, the Republic of Moldova, Senegal, Spain, Swaziland and Ukraine. Civil society organizations also responded to a similar questionnaire. All responses are available on the webpage of the mandate holder at www.ohchr.org/EN/Issues/Poverty/Pages/Fiscalandtaxpolicy2014.aspx.

II. Normative framework

11. International human rights law sets obligations for States to respect, protect and fulfil human rights in all the ways that they exercise their functions, and the design, implementation and monitoring of revenue-raising policies is no exception. In the section below, the Special Rapporteur examines how a State's use of its revenue-raising power has a direct impact on its ability to comply with international human rights obligations, in particular relating to the economic, social and cultural rights of people living in poverty.

A. Rights to equality and to non-discrimination

12. States have an obligation to guarantee that human rights are exercised without discrimination of any kind. This is a fundamental pillar of international human rights law and an immediate obligation of all States.[9]

13. The rights to equality and to non-discrimination should be respected in all revenue-raising policies State. Thus, any action or omission by the State in this area must not discriminate, either directly or indirectly,[10] against any individual or group (including on the basis of race, gender, disability or economic and social status) or perpetuate discrimination and inequality.[11]

14. The discrimination prohibited under international human rights law includes any distinction, exclusion, restriction or preference or other differential treatment that has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of all rights.[12] Not all differences in treatment, however, constitute discrimination. A distinction is compatible with the principles of equality and non-discrimination if the differentiation is reasonable and objective, and pursues a legitimate aim under human rights instruments, and there is a reasonable relationship of proportionality between the means employed and the aim sought.[13]

15. Moreover, in some circumstances, these rights require States to take affirmative action or special measures to prevent, diminish and eliminate the conditions and attitudes that cause or perpetuate systemic or de facto discrimination.[14] These measures should not be considered discriminatory because they address structural disadvantages and encourage the equal enjoyment of human rights.

16. In revenue collection, compliance with these rights may require States to set up a progressive tax system with real redistributive capacity that preserves, and progressively increases, the income of poorer households. It also implies that affirmative action measures

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[9] See, for example, the preamble to the Charter of the United Nations and Arts. 1, para. 3, and 55; Universal Declaration of Human Rights, art. 2, para. 1; International Covenant on Economic, Social and Cultural Rights, art. 2; International Covenant on Civil and Political Rights, arts. 2 and 26; International Convention on the Elimination of All Forms of Racial Discrimination, art. 1; Convention on the Elimination of All Forms of Discrimination against Women, art. 1; and Convention on the Rights of Persons with Disabilities, art. 2.

[10] E/C.12/GC/20, para. 10.

[11] Ibid., para. 35.

[12] Ibid., para. 7, and *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40* (A/45/40), annex VI, Human Rights Committee general comment No. 18, paras. 6 and 7.

[13] E/C.12/GC/20, para. 7; Human Rights Committee general comment No. 18, para. 13.

[14] See for example Convention on the Elimination of All Forms of Discrimination against Women, art. 4, para. 1; International Convention on the Elimination of All Forms of Racial Discrimination, art. 2, para. 2; Human Rights Committee general comment No. 18, para.10; and E/C.12/GC/20, para. 39.

aimed at assisting the most disadvantaged individuals and groups that have suffered from historical or persistent discrimination, such as well-designed subsidies or tax exemptions, would not be discriminatory. In contrast, a flat tax whereby all people are required to pay an equal proportion of their income would not be conducive in achieving substantive equality, as it limits the redistributive function of taxation.

17. Revenue collection is a critical tool for States in tackling and redressing systemic discrimination and ensuring equal access to economic, social and cultural rights. In order to redress structural inequalities, including gender inequalities, States should evaluate the differential impact of existing and proposed fiscal policies on different groups, in particular those who suffer from structural discrimination. For example, certain tax arrangements that directly or indirectly disincentivize women's participation in the labour force or promote the male bread-winner family model could threaten women's enjoyment of human rights.[15] Meanwhile, a State with a very narrow tax base or that fails to tackle tax evasion may result in its inability to fund social protection or adequate and accessible public services, a situation that is likely to create or entrench inequalities.

B. Right to self-determination

18. The right to self-determination, enshrined in both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, expressly encompasses the rights of peoples (not the State or Government) to freely dispose of their natural wealth and resources.[16] Considering that many natural resources are finite and non-renewable, this right needs to be protected with special care, taking into account the rights of future generations.[17] At the very least, a State's population has a right to enjoy a fair share of the financial and social benefits that natural resources can bring. This requires ensuring participation, access to information and high standards of transparency and accountability in decision-making about the use of natural resources. Where indigenous peoples are involved, States have additional and specific obligations, including ensuring free, prior and informed consent in any decisions regarding the use of their lands.[18]

19. The right to self-determination also underlines the rights of all peoples to "freely pursue their economic, social and cultural development" and the duty of States to respect that right. This has clear implications for activities that undermine the ability of other States to raise revenue and fund their own development.

C. Rights to participation, accountability, transparency and access to information

20. The rights to participation, accountability, transparency and access to information are critical human rights principles that also apply to fiscal policies and must be implemented throughout the policy cycle, from design of budgets and tax codes, allocation of expenditure, through to monitoring and evaluation of impact.

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[15] See Convention on the Elimination of All Forms of Discrimination against Women, arts. 5 and 16.

[16] See also the Declaration on the Right to Development, art. 1, para. 2.

[17] See for example A/HRC/24/44.

[18] See Declaration on the Rights of Indigenous Peoples, arts. 10 and 32, and ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169).

21. Many human rights treaties emphasize the right to participation.[19] In particular, article 25 of the International Covenant on Civil and Political Rights includes the right of all people to take part in the conduct of public affairs, a right that covers all aspects of public administration and the formulation and implementation of policy at international, national, regional and local levels.[20] Effective and meaningful participation is in turn dependent on the right to seek, receive and impart information.[21]

22. Decision-making processes regarding tax and public revenues must therefore be based on full transparency and the broadest possible national dialogue, with effective and meaningful participation of civil society and those who will be directly affected by such policies, including people living in poverty.[22] Fiscal policies should be subjected to the scrutiny of the population during design, implementation and evaluation stages, with the various interests transparently identified. This will require capacity-building and fostering fiscal literacy in the population. The population should have access to all relevant information in an accessible and understandable format,[23] and inclusive mechanisms should be put in place to ensure that they are actively engaged in devising the most appropriate policy options.[24] Owing to the asymmetries of power, expertise and interests in this debate, specific measures should be taken to ensure equal access and opportunities to participate, particularly for people living in poverty.[25]

23. To ensure accountability, fiscal policies, including, for example, tax incentives granted to foreign investors, should be open to judicial oversight, while public officials should be accountable for decisions that endanger the enjoyment of human rights. Accessible mechanisms for complaints and redress should also be put in place.

D. Specific obligations with regard to economic, social and cultural rights

24. Although obligations with regard to economic, social and cultural rights are primarily enshrined in the International Covenant on Economic, Social and Cultural Rights, provisions regarding such rights are also included in the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities.

25. States must devote the "maximum available resources" to ensure the progressive realization of all economic, social and cultural rights as expeditiously and effectively as possible,[26] even during times of severe resource constraints, whether caused by a process of adjustment, economic recession or other factors.[27] This principle should guide the State's decisions and priorities in generating, mobilizing and allocating resources in order to permit the realization of human rights. The obligation of progressive realization independent of

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[19] See A/HRC/23/36.

[20] See Human Rights Committee general comment No. 25 (CCPR/C/21/Rev.1/Add.7).

[21] Universal Declaration of Human Rights, art. 19; International Covenant on Civil and Political Rights, art. 19.

[22] See A/HRC/17/34/Add.2, paras. 36-38.

[23] Human Rights Committee general comment No. 34 (CCPR/C/GC/34), para. 19.

[24] A/HRC/23/36.

[25] Idem.

[26] International Covenant on Economic, Social and Cultural Rights,art. 2, para. 1. See also the Convention on the Rights of the Child, art. 4, and the Convention on the Rights of Persons with Disabilities, art. 4, para. 2.

[27] *Official Records of the Economic and Social Council, 1991, Supplement No. 3* (E/1991/23), annex III, Committee on Economic, Social and Cultural Rights, general comment No. 3.

economic growth also exists; it requires the effective use of available resources,[28] including potential resources that could be raised through reasonable efforts, such as taxation measures and international assistance and cooperation.[29] Other areas are also critical for mobilizing resources, including debt and deficit financing, monetary policy and financial regulation.[30]

26. Although most provisions in the International Covenant on Economic, Social and Cultural Rights are considered subject to progressive realization, States that claim resource constraints have the burden of proof to show that every effort has been made to move towards the full enjoyment of economic, social and cultural rights as a matter of priority, and that they are truly unable rather than unwilling to meet these obligations.[31] This includes an obligation to "actively seek assistance" through international cooperation.[32]

27. Moreover, States parties to the International Covenant on Economic, Social and Cultural Rights have an immediate core obligation to ensure the satisfaction of, at the very least, minimum essential levels of all economic, social and cultural rights.[33] These minimum essential levels are entitlements that are crucial to securing an adequate standard of living through basic subsistence, essential primary health care, basic shelter and housing and basic forms of education for all members of society.[34] Even during times of severe resource constraints, States must demonstrate that every effort has been made to use all resources that are at its disposal, including resources that could potentially be collected through taxation, or tackling tax evasion and other illicit financial flows, in an effort to satisfy, as a matter of priority, minimum essential levels.[35]

28. The obligation to progressively realize economic, social and cultural rights entails a prohibition of deliberate retrogression, namely, of measures that directly or indirectly lead to backwards steps in the enjoyment of rights. There is a strong presumption that such measures are in violation of human rights standards. States may only adopt such retrogressive measures if they can demonstrate that they have carefully considered all alternatives, including revenue-raising ones, and that they are duly justified by reference to the totality of the rights in the International Covenant on Economic, Social and Cultural Rights, in the context of the full use of the maximum available resources.[36] The

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[28] Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, art. 23.

[29] International Covenant on Economic, Social and Cultural Rights, art. 2, para. 1.

[30] Excessive debt servicing payments may, however, also undermine the ability of debtor countries to realize rights. See Radhika Balakrishnan, Diane Elson, James Heintz and Nicholas Lusiani, *Maximum Available Resources & Human Rights: Analytical Report*, Center for Women's Global Leadership, June 2011. See also the reports of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic social and cultural rights.

[31] See for example Committee on Economic, Social and Cultural Rights general comment No. 14 (E/C.12/2000/4), para. 47.

[32] See the Guiding Principles on Poverty and Human Rights, para. 94; A/45/40, annex VI, para. 10; *Official Records of the Economic and Social Council, 1995, Supplement No. 3* (E/1995/22), annex IV, Committee on Economic, Social and Cultural Rights general comment No. 5, para. 13; and E/C.12/1999/4, general comment No. 11, para. 11.

[33] E/1991/23, annex III, para. 10.

[34] Ibid.

[35] E/C.12/2007/1, paras.4-6. See also Committee on Economic, Social and Cultural Rights general comments No. 3 (E/1991/23, annex III), para. 12, No. 12 (E/C.12/1999/5), para. 28, and No. 14 (E/C.12/2000/4), para. 18.

[36] Committee on Economic, Social and Cultural Rights general comment No. 3 (E/1991/23, annex III) para. 9. See also general comments No. 13 (E/C.12/1999/10), para. 45, No. 14 (E/C.12/2000/4), para.

compatibility of, for example, austerity measures (such as those that many States implemented in the wake of the 2008/09 financial crisis) with the Covenant would therefore depend partly on whether the State has sought revenue-raising alternatives before making cuts in areas that are important for ensuring the enjoyment of economic, social and cultural rights, such as cuts in public sector employment, public services or social protection.

E. Obligations of international assistance and cooperation

29. States have a duty to provide international assistance and cooperation commensurate with their capacities, resources and influence, as established in Articles 55 and 56 of the Charter of the United Nations and in several international human rights treaties. Particularly important are the obligations of international assistance and cooperation enshrined in the International Covenant on Economic, Social and Cultural Rights (arts. 2, para. 1 and 1, para. 1), the Convention on the Rights of the Child (art. 4) and the Convention on the Rights of Persons with Disabilities (art. 32), on the basis of the recognition that some countries will not be able to achieve the full realization of economic, social and cultural rights if other countries in a position to assist do not do so.

30. As part of international cooperation and assistance, States have an obligation to respect and protect the enjoyment of human rights everywhere, which involves avoiding conduct that would foreseeably risk impairing the enjoyment of human rights by persons beyond their borders, and conducting assessments of the extraterritorial impact of laws, policies and practices.[37]

31. States must refrain from any conduct that impairs the ability of another State to comply with its own human rights commitments.[38] Furthermore, they have an obligation to create an international enabling environment for the fulfilment of economic, social and cultural rights, including in matters relating to taxation. They should also coordinate with each other in order to cooperate effectively in the universal fulfilment of economic, social and cultural rights.[39]

32. In this sense, providing an avenue for high-net-worth individuals and transnational corporations to evade tax liabilities (such as through the establishment of tax havens) could be contrary to obligations of international assistance and cooperation, because it can directly undermine the ability of another State to mobilize the maximum available resources for the progressive realization of economic, social and cultural rights. This could then obstruct the residents of that State from enjoying, for example, their rights to health, education or social security.

33. When acting as a member of an international organization, a State remains responsible for its own conduct in relation to its human rights obligations within and outside its territory. This includes identifying the possible human rights impact of measures agreed at the international level, including the impact on persons living in poverty.[40] Therefore, when a State makes decisions about loans as a member of an international financial institution, careful consideration of human rights obligations would mitigate against imposing conditions regarding fiscal policies that may jeopardize the human rights of the borrower

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32, No. 15 (E/C.12/2002/11), para. 19, No. 17 (E/C.12/GC/17), para. 27, No. 18 (E/C.12/GC/18), para. 34, No. 19 (E/C.12/GC/19), para. 42 and No. 21 (E/C.12/GC/21), para. 65.

[37] Guiding principles on extreme poverty and human rights (A/HRC/21/39), para. 92.

[38] See Maastricht Principles (see footnote 6), art. 21.

[39] A/HRC/21/39, para. 61. See also Maastricht Principles, principle 29.

[40] A/HRC/21/39, para. 97.

State's population or undermine that State's ability to use maximum available resources to realize economic, social and cultural rights.

34. In the past, it has been difficult to reach international agreement on tax cooperation owing to the powerful entrenched interests at play and the reluctance of States to cede any sovereignty on tax affairs. In the current status quo, however, certain States – in particular low-income States and States with high debt levels or loans from international financial institutions – have very limited sovereignty over their tax affairs. Indeed, their actions in this sphere are frequently constrained by wealthy countries, international financial institutions and business interests. Tax sovereignty is also undermined by competition for foreign investment between developing countries, creating a "race to the bottom" in terms of both corporate tax rates and incentives.

35. A contemporary interpretation of existing obligations of international cooperation and assistance should recast or redefine the outdated emphasis on tax sovereignty to a more modern conception of international tax cooperation in a globalized and interdependent world economy (see paras. ... below).[41]

III. Tax: a critical tool for realizing human rights and tackling inequality

36. Taxation is critical to finance development and can be a powerful tool for stimulating poverty reduction. Higher and more stable revenues result in increased sustainable investment in public services, infrastructure and other development needs, and improve competitiveness of economies over the long term. Taxes are not the only source of government revenue, but they are arguably the most important, because they combine three critical functions, addressed below: (a) the generation of revenue for the realization of rights; (b) achieving equality and tackling discrimination; and (c) strengthening governance and accountability.

37. Certainly, poverty reduction is more effective and sustainable when combined with investments in areas such as education, health and food security. These areas are also critical for ensuring the realization of rights in the present and future and for overcoming the intergenerational transmission of poverty.

38. Taxation policies also have the potential to reduce income and wealth inequalities, depending on their level and progressiveness.[42] This is a crucial goal, because inequalities have been shown to slow the pace of poverty reduction, create intergenerational poverty traps through uneven access to health and education, and increase the vulnerability of societies to economic crises.[43] Some research has shown that improvement in income

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[41] See for example the advisory opinion of 21 June 1971 on *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970)*, ICJ Reports 1971, p. 16, para. 31.

[42] Every year from 1985 to 2005, direct income taxes and transfers reduced the average Gini coefficient of income inequality in 25 countries of the Organization for Economic Cooperation and Development by about one third. See Francesca Bastagli, David Coady and Sanjeev Gupta, *Income Inequality and Fiscal Policy*, IMF Staff Discussion Note, 28 June 2012, p.11. See also ECLAC, *Time for equality: closing gaps, opening trails*, 2010, p. 225.

[43] See Department of Economic and Social Affairs, *Inequality Matters: Report on the World Social Situation 2013*, pp. 66-68, and Fiscal Policy and Income Inequality, IMF Policy Paper, 23 January 2014.

distribution is the key channel for poverty reduction.[44] In most economies, the redistribution achieved through income taxes is even higher than for means-tested social transfers.[45]

39. Moreover, when revenue is used to finance public services, it creates conditions propitious to growth and employment in formal sectors of the economy, guaranteeing both equality of access and equality of opportunities.[46] Public services also mitigate the impact of skewed income distribution and directly contribute to reducing inequality.[47]

40. Promoting economic growth is also a primary and legitimate concern of State fiscal policies. Progressive taxation can, however, help Governments to achieve more sustainable growth and to distribute the fruits of prosperity more fairly. Indeed, a recent study by the International Monetary Fund (IMF) found that the combined direct and indirect effects of redistribution, including the growth effects of the resulting lower inequality, are on average pro-growth.[48] Many developing countries have experienced significant economic growth in recent decades, although without a proportionate reduction in poverty or inequality, indicating that the benefits of growth have been concentrated in the hands of a few. This is in large part because the proceeds of growth have not been adequately taxed and redistributed, leading to a concentration of wealth that has considerable negative implications for human rights, social cohesion and future economic growth prospects.[49]

41. The Special Rapporteur explores three key areas in which government revenue-raising policies or practices can facilitate the enjoyment of human rights below.

A. Generating revenue for the realization of rights

42. The most straightforward way in which government revenues can facilitate compliance with human rights obligations is by providing resources for public goods, such as education and health services – goods that are critical to realizing human rights and that ultimately benefit the whole of society.

43. The quality, accessibility and availability of goods and services needed for the realization of human rights, such as the rights to an adequate standard of living, health, education and social security, will hinge on the resources that the State is able to collect. According to the United Nations Educational, Scientific and Cultural Organization (UNESCO), strengthening tax systems is vital to guarantee the right to education. Many of the countries furthest from achieving the widespread enjoyment of the right to education do not, however, tap their tax bases sufficiently.[50]

44. Low levels of revenue collection have a disproportionate impact on the poorest segments of the population and constitute a major obstacle to the capacity of the State to finance public services and social programmes. A lack of access to quality services is a constituent element of poverty, and people living in poverty are particularly dependent on public services, being unable to pay for private alternatives. In addition, their specific needs

[44] Abbas Grammy and Djeto Assane, "The Poverty-Growth-Inequality Triangle Hypothesis: an Empirical Examination", *Journal of Policy Modelling*, 16 November 2006.

[45] IMF, Fiscal Policy and Income Inequality (see footnote 43), p. 16.

[46] ECLAC, *Time for Equality* (see footnote 42) p. 225.

[47] Oxfam International, Working for the Many: Public services fight inequality, 3 April 2014.

[48] Jonathan D. Ostry, Andrew Berg and Charalambos G. Tsangarides, "Redistribution, Inequality and Growth", IMF Staff Discussion Note, February 2014.

[49] Tax Justice Network Africa and Christian Aid, "Africa rising? Inequalities and the essential role of fair taxation", February 2014.

[50] UNESCO, 2013/4 Education for All Global Monitoring Report, – "Teaching and learning: achieving quality for all", p. 116.

and characteristics make it more likely they will have to interact with State-funded institutions and services on a regular basis. This is particularly the case for people who experience multiple forms of discrimination and disadvantage; for example, persons with disabilities are more likely to come into regular contact with health and social services, while women are more likely to be directly dependent on social protection and health systems for at least some period of their lives because of their sexual and reproductive health and maternity-related needs. Women also serve as unpaid alternative care providers when public services are not adequately funded, increasing their time burden and limiting their opportunities to engage in paid work, education, training or leisure, while also negatively affecting their enjoyment of rights such as health, education, participation and social security.[51]

B. Achieving equality and tackling discrimination

45. Transferring and redistributing wealth through taxation has the potential to redress systemic discrimination (based on, inter alia, gender, race, age, sexual orientation, disability, socioeconomic status) and to spur progress towards substantive equality.[52] These are fundamental human rights goals and are conducive to sustainable poverty reduction. Tax structures must, however, be carefully designed if a more equitable distribution of incomes is to be achieved.

46. Progressive tax systems, in particular direct taxes, are one of the most important tools available to Governments in addressing income inequality.[53] Personal income tax is one of the most progressive and important kinds of tax in this regard. Indirect taxes, such as those based on consumption (such as value-added or sales taxes) are typically regressive, because they generally constitute a larger proportion of the income of people living in poverty;[54] for example, in Latin America, on average for the poorest 20 per cent of the population, sales tax accounts for 13.7 per cent of their income, while only 5.8 per cent of income for the richest 20 per cent.[55] Thus, despite exemptions aimed at decreasing the burden on lower-income groups, the poor bear a tax burden 2.4 times higher than that of the wealthiest people.[56] Women, who tend to use larger portions of their income on basic goods because of gender norms that assign them responsibility for the care of dependents, bear the regressive brunt of consumption taxes.[57]

47. Overall, high tax rates for goods and services and low rates for income, wealth and property bring about inequitable and discriminatory outcomes; indeed, it has been shown that the negative effect of indirect taxes on the income of people living in or on the verge of poverty can be greater than the positive effect of cash transfers.[58] Such regressive tax structures also restrict the redistributive aspect of social programmes, resulting in them

[51] See A/68/293.

[52] Ignacio Saiz, "Resourcing Rights: Combating Tax Injustice from a Human Rights Perspective", in Aoife Nolan, Rory O'Connell and Colin Harvey (eds.), *Human Rights and Public Finance* (Oxford, Hart Publishing, 2013).

[53] See IMF, *Fiscal Policy and Income Inequality* (see footnote 43), and Tax Justice Network Africa Africa and Christian Aid, *Africa Rising?* (see footnote 49).

[54] See Isabel Ortiz and Matthew Cummins, "A Recovery for All", UNICEF, 2012, p. 210.

[55] Inter-American Development Bank, *Recaudar No Basta: Los impuestos como instrumento de desarrollo*, 2013, p. 247.

[56] Ibid.

[57] UNDP, Gender Equality and Poverty Reduction: Taxation, Issues Brief, No. 1, April 2010.

[58] Nora Lustig, "Taxes, Transfers and Income Redistribution in Latin America", World Bank, *Inequality in Focus*, vol. 1, No. 2, 2012.

effectively being funded by the very persons whom they seek to benefit.[59] Thus, although each country's situation is different, the higher the prevalence of regressive taxes in the mix of revenue-raising sources, the more likely it is that a State will run afoul of the principles of equality and non-discrimination and that the minimum essential enjoyment of rights by the poorest will be threatened.

48. A well-placed tax threshold (namely, the income below which an individual or household is exempted from income tax) is also crucial for ensuring that the taxation system does not jeopardize the ability of people living in poverty to enjoy minimum essential levels of economic, social and cultural rights. Unfortunately, in some countries, households are required to pay tax before they earn enough to even meet minimum food basket requirements.[60]

49. Tax structures also affect other types of inequality; for instance, tax structures frequently discriminate against women directly or indirectly, for example by assuming women's income to be supplemental to their household.[61] This actively disincentivizes wage-earning and therefore could reduce participation in the labour market by women, potentially threatening their right to work. Policymakers should be aware of the extent to which tax policies, such as the treatment of income derived from jointly-owned assets of married couples, strengthen or break down gender inequalities, or discriminate against different types of households.[62]

50. Each national and economic context is different; the optimum form and scale of redistribution is therefore different for each country. States do have, however, an obligation to address proactively inequality in the enjoyment of rights. Redistribution through tax systems is clearly a powerful tool for them to do so.

C. Strengthening governance and accountability

51. Historically, the formation of accountable and effective States has been closely tied to the emergence of taxation systems.[63] Fiscal policies can spur State-building and foster citizenship,[64] affect the level and quality of people's participation in public affairs and strengthen the accountability and capacity of the State.[65] Conversely, tax abuse and unfair tax practices erode confidence in government, while States that do not have to rely on tax contributions (but rather on, for example, revenues from natural resources) tend to exhibit lower levels of accountability and participation in public affairs.[66]

52. In the same vein, the more a State can rely on domestic rather than external resource mobilization for its financing, the more it will be able to deploy sustainable development strategies and policies that are responsive to the needs of its people and accountable to them. Therefore, a sustainable base of domestic revenue becomes an enabling factor to

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[59] A/HRC/13/33/Add.6, para. 36.

[60] Tax Justice Network Africa and Christian Aid, "Africa Rising?" (see footnote 49), p. 7.

[61] See Diane Elson, Budgeting for Women's Rights: Monitoring Government Budgets for Compliance with CEDAW, UNIFEM, May 2006, pp. 69-103; Caren Grown and Imraan Valodia, *Taxation and Gender Equity*, 2010.

[62] UNDP, Gender Equality and Poverty Reduction: Taxation (see footnote 57).

[63] Mick Moore, "How Does Taxation Affect the Quality of Governance?", IDS Working Paper, 2007.

[64] European Commission, Tax and Development, COM(2010)163 final, 2010, p. 3.

[65] See OECD, *Governance, Taxation and Accountability: Issues and Practices*, 2008, p.13.

[66] African Development Bank, OECD et al, African Economic Outlook 2012, p. 56; Ernesto Crivelli and Sanjeev Gupta, "Resource Blessing, Revenue Curse? Domestic Revenue Effort in Resource Rich Countries", IMF Working Paper, 2014.

exercise the right to self-determination and the right of all persons to take part in the conduct of public affairs.[67] In this regard, it will also be crucial to build public confidence that these resources are being well used by, for example, increasing public participation and oversight of budgeting and expenditure.

53. Income distribution and its management through taxation also have a crucial relationship with democracy. Growing income disparities can serve to polarize and fragment societies, which can ultimately lead to alienation and social unrest.[68]

VI. Strengthening revenue raising through a human rights-based approach

54. In order to realize the potential of taxation to fulfil the above-described functions to the greatest possible extent, there are several actions that States should take. These measures are examined from the human rights perspective below.

A. Widening the tax base and improving efficiency

55. In some States, despite significant efforts to increase revenue through taxation, the amount actually collected is demonstrably inadequate to realize human rights. In Latin America and the Caribbean, for example, most States have tax ratios that are clearly lower than they should be when their level of development is considered.[69] It is however crucial that taxes be raised and collected in human rights-compliant ways, where those who can least afford it are not asked to pay more (see paras. 45 – 50 above).

56. Evidence shows that, even in developing countries, widening tax bases and improving tax collection efficiency could raise considerable additional revenue.[70] For instance, if all developing countries were able to raise 15 per cent of their national income in tax, a commonly accepted minimum figure (the OECD average is 37 per cent), they could realize at least an additional $198 billion per year, more than all foreign development assistance combined.[71]

57. Tax collection efficiency can also be increased by improvements in tax administration. Tax administrations with appropriate financial, personal and technical resources are critical to increase levels of revenue collection and to avoid abuse. Lack of investment in tax authorities is therefore a short-term false economy, with negative implications for the enjoyment of human rights. It is also crucial that tax authorities be perceived as being independent, fair, transparent and accountable.

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[67] International Covenant on Civil and Political Rights, art. 25. See also A/HRC/23/36.

[68] Department of Economic and Social Affairs, *Inequality Matters* (see footnote 43), p. 22; IMF, Fiscal Policy and Income Inequality (see footnote 43), p. 4.

[69] The average tax ratio in Latin America is 18 per cent of GDP. ECLAC, *Time for Equality* (see footnote 42), p. 228.

[70] See IMF, Revenue Mobilization in Developing Countries, 8 March 2011, p. 17; UNDP, *What will it take to achieve the Millennium Development Goals? An International Assessment*, June 2010, p. 26.

[71] ActionAid, *Accounting for Poverty: How international tax rules keep people poor*, 2009, p. 5.

B. Tackling tax abuse

58. Tax abuse includes tax evasion, fraud and other illegal practices, including the tax losses resulting from other illicit financial flows, such as bribery, corruption and money laundering.[72] Levels of tax evasion are extremely high in many countries;[73] globally, approximately $3 trillion of government revenue is lost to tax evasion every year.[74] While high-income countries are the biggest losers in absolute terms, low- and middle-income countries are particularly affected by the losses, and also face particular constraints when tackling tax abuse.[75] In 2011, developing countries lost $946.7 billion owing to illicit financial flows (a substantial portion of which relates to tax abuse),[76] according to OECD more than seven times official development assistance for that year, and substantially more than the estimated costs of achieving the Millennium Development Goals.[77]

59. Tax abuse is thus not a victimless practice; it limits resources that could be spent on reducing poverty and realizing human rights, and perpetuates vast income inequality. While the rich benefit from this practice, the poor feel the negative impact on their standard of living, their unequal political power and the inferior quality of health and education services for themselves and their children. Simulations suggest that, if all the capital flight from Africa over the period 2000-2008 had been invested in Africa, with the same productivity as actual investment, the average rate of poverty reduction would have been 4 to 6 percentage points higher per year.[78] Meanwhile, the recent devastating austerity measures taken in some countries could have been avoided entirely if some of the annual revenue lost from tax evasion had been recovered.[79]

60. A State that does not take strong measures to tackle tax abuse cannot be said to be devoting the maximum available resources to the realization of economic, social and cultural rights. Moreover, high levels of tax abuse undermine the principles of equality and non-discrimination, given that evaders end up paying less than taxpayers with the same – or less – capacity to pay. High net-worth individuals and large corporations also have a far greater ability to evade taxes as they are able to pay tax advisers, lawyers and accountants (who may sometimes provide inappropriate advice and assistance) and to open undeclared foreign bank accounts in low-tax jurisdictions. Tax abuse by corporations and high net-worth individuals forces Governments to raise revenue from other sources: often regressive taxes, the burden of which falls hardest on the poor. Therefore, if States do not tackle tax abuse, they are likely to be disproportionately benefiting wealthy individuals to the detriment of the most disadvantaged. Monitoring, preventing and punishing abuse is therefore essential in order to comply with human rights principles and improve the distributive effects of tax systems.

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[72] Human Rights Institute Task Force on Illicit Financial Flows, Poverty and Human Rights, International Bar Association, *Tax Abuses, Poverty and Human Rights*, October 2013.

[73] According to the Inter-American Development Bank (*More Than Revenue*, 2013, p. 22), evasion rates of personal and corporate income taxes average about 50 per cent in 10 Latin American countries.

[74] "The Cost of Tax Abuse", Briefing paper on the cost of tax evasion worldwide, Tax Justice Network, November 2011.

[75] Ibid.

[76] See Dev Kar and Brian LeBlanc, *Illicit Financial Flows from Developing Countries: 2002-2011*, Global Financial Integrity, 2013.

[77] See Shantayanan Devarajan, Margaret J. Miller and Eric V. Swanson, "Development Goals: History, Prospects and Costs", World Bank Policy Research working paper summary.

[78] Tax Justice Network Africa and Christian Aid, *Africa Rising?* (see footnote 49), p. 28.

[79] See Ortiz and Cummins, *The Age of Austerity*, Initiative for Policy Dialogue and the South Centre, working paper, 2013 p. 29; Center for Economic and Social Rights, Spain factsheet, 2012, p. 7.

61. It is important to note, however, that tax evasion is not possible in a domestic vacuum. Individual countries, in particular low-income countries, are severely constrained in the measures that they alone can take against tax abuse. Illicit financial flows are international in nature and therefore beyond the capacity of one State alone to tackle. The availability of offshore financial centres (tax havens) that offer low or no taxes and secrecy is a major factor. More than $21 trillion in private assets are reportedly held in tax havens to evade and avoid taxes.[80] Tax havens enable large-scale tax abuse (as well as illicit activities, such as corruption) and deprive other countries of the revenue they need to fulfil their obligations. In addition, given that most tax havens are located in – or under the jurisdiction of – wealthy countries, the global flow of money to these centres exacerbates global inequalities.[81]

62. The actions of States to facilitate and/or actively promote tax abuse and other illicit financial flows through their tax secrecy laws and policies could jeopardize their compliance with international human rights obligations, particularly with regard to international cooperation and economic, social and cultural rights.[82] States should therefore take concerted and coordinated measures against tax evasion globally as part of their domestic and extraterritorial human rights obligations and their duty to protect people from human rights violations by third parties, including business enterprises (see paras. 1 – 35 above).

C. Reassessing corporate taxation contributions

63. In many countries, business enterprises are taxed at a very low rate, even if they make large profits, owing in large part to the infrastructure, healthy educated workforce and other resources that public funds enable. In addition, many large transnational corporations are able to effectively avoid tax in many jurisdictions, including in countries where they make large profits.

64. States increasingly grant tax incentives (or tax holidays) to corporations[83] as they compete to attract foreign investment.[84] Many least developed countries, for example, offer extremely favourable tax deals to foreign investors in agriculture and mining owing to the perceived competition between countries for this investment.[85] These incentives warrant a heightened level of scrutiny in human rights terms, because they restrict the State's revenue and therefore the resources it is able to devote to rights realization. According to some estimates, revenue losses to developing countries can reach $138 billion per year.[86]

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[80] James S. Henry, The Price of Offshore Revisited, Tax Justice Network, July 2012.

[81] See United States Government Accountability Office, International Taxation: Large U.S. Corporations and Federal Contractors with Subsidiaries in Jurisdictions Listed as Tax Havens or Financial Privacy Jurisdictions, December 2008, pp. 12-13.

[82] A/HRC/25/52, para. 42.

[83] Accord to IMF(Michael Keen and Mario Mansour, Revenue Mobilization in Sub-Saharan Africa: Challenges from Globalization, IMF Working Paper, 2009, p. 19), in sub-Saharan Africa between 1980 and 2005, the proportion of countries providing incentives rose from 45 to 69 per cent. Effective corporate tax rates have dropped close to or even below zero in many developing countries (S. M. Ali Abbas and Alexander Klemm, A Partial Race to the Bottom: Corporate Tax Developments in Emerging and Developing Economies, IMF Working Paper, 2012, p. 9).

[84] Supporting the Development of More Effective Taxation Systems: a report to the G-20 Development Working Group by the IMF, OECD, UN and World Bank, 2011.

[85] UNCTAD, Least Developed Countries Report 2013, p. 136.

[86] ActionAid, *Give us a break: How big companies are getting tax-free deals*, June 2013.

Estimates in many African countries show that revenue losses from tax incentives were between 2 and 8 per cent of GDP.[87]

65. The evidence that incentives succeed in attracting investment is actually weak.[88] It is likely that, in many cases, the investment would have come even without the incentive, and that the costs of the incentive may indeed outweigh the benefit of the investment.[89] Moreover, the granting of incentives has global ramifications, as it creates a "race to the bottom". There are also significant implications for the right to information, transparency and accountability, as tax incentives are often negotiated in secret between the Government and the company concerned, fostering corruption and weak governance.

66. Incentives sometimes take the form of a "tax stability" "or "advance pricing" agreement, signed with foreign investors to insulate them from future changes in the domestic tax rates for an extended period of time. These types of agreement should also be examined with caution under human rights law, because they reduce public resources regardless of the evolving impact on human rights.[90]

67. As in any case where a State is alleged to be failing to use its maximum available resources to fulfil obligations to progressively realize economic, social and cultural rights, incentives would have to be justified by a clear description of deliberate, concrete and targeted advances towards the fulfilment of human rights that can be expected from their implementation.[91] States parties to the International Covenant on Economic, Social and Cultural Rights would also have the burden of proving periodically that the granting of corporate tax breaks was the least restrictive policy option from the perspective of economic, social and cultural rights.[92]

D. Broadening the contributions of the financial sector

68. The huge growth of the financial sector in recent decades and the bailout in the wake of the 2008-2009 crisis raise significant human rights concerns. It is clear that at least some of the profitability growth was precisely due to the risk-taking and leveraging that ultimately proved excessive, resulting in a huge rescue from public funds that could have been used for poverty reduction and the realization of human rights. The sector's excess returns were thus made, at least partially, at the expense of the public, while its tax rates were kept low. The owners, managers and/or creditors of financial institutions were able to enjoy the full gains of good times, whereas ordinary taxpayers were expected to shoulder the costs to save the sector as it was collapsing, while also having to endure austerity measures.[93] Insufficiently regulated financial sectors have also played a role in enabling the aggressive

[87] Tax Justice Network Africa and Christian Aid, *Africa Rising?* (see footnote 49), p. 43.

[88] See ibid. IMF, OECD et al, Supporting the Development (see footnote 84), pp. 19-20; McKinsey Global Institute, *New Horizons: Multinational Company Investment in Developing Economies*, October 2003, p. 2; and ActionAid, *Give us a break* (see footnote 86).

[89] Louis T. Wells Jr., Nancy J. Allen, Jacques Morisset and Neda Pirnia, "Using Tax Incentives to Compete for Foreign Investment: Are they Worth the Costs?", Occasional Paper 15, Foreign Investment Advisory Service, 2001.

[90] The Guiding Principles on Business and Human Rights clearly require States to "maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with business enterprises, for instance through investment treaties or contracts" (principle 9).

[91] See E/C.12/2007/1, para.8 (a).

[92] Ibid., paras. 8 (d) and (e).

[93] See IMF, *A Fair and Substantial Contribution by the Financial Sector*, Final Report for the G-20, June 2010, p. 9,

avoidance or evasion of taxation by other actors, for instance through structured finance instruments,[94] transfer pricing or profit shifting (see paras. 74 – 78 below).

69. Low tax demands of the financial sector and lack of regulation may therefore be indicative of a State's unwillingness (rather than inability) to use its maximum available resources. Increasing taxation of the financial sector could play a role in redressing this balance and discourage the excessive risk-taking that led to the crisis.[95] Taxes on certain types of financial transactions have been introduced in various jurisdictions (including in India, Peru, South Korea and Sweden) as a way to raise revenue from the financial sector as well as to deter speculative trading activities that generate risks for the whole of society (in the form of crises or fluctuations in food/fuel prices). This measure could also enable States to better comply with several human rights obligations, in particular those regarding economic, social and cultural rights.[96]

E. Ensuring sustainable use of natural resources while respecting rights

70. Natural resources can be a vital source of revenue that the State can use to comply with its human rights obligations. The financial and social benefits of natural resource exploitation are, however, increasingly bypassing people in producing countries. In most countries, extractive industries generate few jobs directly and have only weak links to local markets.[97] Far from bringing benefits, the exploitation of natural resources has been frequently linked to human rights abuse and encroachment on lands and livelihoods of communities, mass evictions, pollution and environmental degradation, which may result in violations of rights to health, food, housing and water.[98] The right of people to participate in decisions regarding natural resources is often violated, especially where the land, territory and resources of indigenous peoples is concerned.

71. In addition, the rightful benefits in terms of revenue often go abroad (sometimes to tax havens),[99] aided by the fact that extractive industries are often not required to disclose their profits on a project-by-project basis. The public revenue generated through taxes on the sector remains well below potential;[100] the revenue secured by many resource-rich countries is very low in relation to the value of exports.[101]

72. A State allowing or directly undertaking exploitation of natural resources without ensuring that a fair share of the proceeds are taxed and/or allocated towards fulfilling human rights could be an indication of a failure to mobilize adequate resources. Moreover,

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[94] OECD Forum on Tax Administration, *Building Transparent Tax Compliance by Banks*, 13 July 2009.

[95] As mentioned in several responses to the questionnaire distributed by the Special Rapporteur. See Department of Economic and Social Affairs, The potential of financial transaction taxes for development financing, Policy Brief No. 38, July 2012.

[96] See "A global financial transaction tax, a human rights imperative now more than ever", 14 May 2012; and Righting Finance Initiative, *Financial Transaction Tax: A Human Rights Imperative*, No. 3, 2012.

[97] Africa Progress Panel, *Africa Progress Report 2013: Equity in Extractives*, p. 63.

[98] See ibid. and A/HRC/18/35.

[99] Africa Progress Panel, *Africa Progress Report* (see footnote 97), p. 60.

[100] See UNECA and African Union, *Minerals and Africa's Development*, 2011, p. 92; and ibid., p. 63.

[101] See Africa Progress Panel, *Africa Progress Report* (see footnote 97), p. 64.

excessive reliance on revenues from finite natural resources raises concerns not only about long-term sustainability but also governance and accountability.[102]

73. The political processes and policy choices that guide the capture and distribution of revenues from natural resource exploitation often determine whether they can be allocated for the progressive realization of economic, social and cultural rights, poverty reduction and social development. Good macroeconomic management of natural resources, such as stabilization funds, exchange rate and monetary policies, and financial and industrial policies that foster diversification are critical to enabling inclusive and sustainable development from natural resource exploitation.[103] Decisions about natural resource extraction must therefore be made with care, taking into account environmental concerns and the rights of future generations while respecting the rights of the entire population.

F. Enhancing international assistance and cooperation

74. In order to take effective and decisive action in these matters, concerted international cooperation is necessary. Without absolving any State of its obligation to raise the maximum available resources domestically to ensure the progressive realization of economic, social and cultural rights, there are limits to national-level actions in the absence of global reforms. Many States are undoubtedly hamstrung in their efforts to enact progressive taxation and combat illicit financial flows that could fight inequality and enhance the realization of economic, social and cultural rights.

75. Globalization and increased cross-border flows of goods and capital have vastly increased the chances that one State's actions or omissions may affect another State's ability to raise public revenues, and increased the ways and means that companies and individuals can use to evade and avoid taxes.[104] Illicit financial flows inevitably involve at least two countries. The tax laws and structures of one State can therefore erode the national tax bases of other States and hamper the application of progressive tax rates and the achievement of redistributive goals, ultimately threatening the realization of rights. There is a therefore a particularly urgent need for States to cooperate proactively on matters of tax and fiscal policy. In particular, high-income States that enable or fail to tackle tax abuse and illicit financial flows should shoulder some responsibility for the shortcomings of the tax and public finance systems in developing countries and related poverty rates, lack of enjoyment of human rights and economic inequalities.

76. While the rules of some international treaties address the handling of cross-border financial flows, they are manifestly inadequate to deal with the nature of modern globalized business. Owing to gaps in the interaction of different tax systems and, in some cases, because of the application of bilateral tax treaties, income from cross-border activities may go untaxed anywhere or be simply undertaxed.[105] Transnational corporations are able to shift profits across borders – including to tax havens where they have little or no real commercial presence – in order to take advantage of tax rates that are lower than in the country where the profit is made. This practice, which deprives both developed and

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[102] See for example Moore, "How Does Taxation Affect the Quality of Governance?" (see footnote 63), p. 14, and Deborah Brautigam, Odd-Helge. Fjeldstad and Mick Moore (eds.), *Taxation and State-Building in Developing Countries: Capacity and Consent,* February 2008.

[103] Katja Hujo, *Mineral Rents and the Financing of Social Policy: Opportunities and Challenges* (United Kingdom, Palgrave, May 2012).

[104] OECD, *Harmful Tax Competition: An Emerging Global Issue*, 1998, pp. 13-14; Africa Progress Panel, *Africa Progress Report* (see footnote 97), p. 65.

[105] OECD, *Action Plan on Base Erosion and Profit Shifting*, 2013, p. 10.

developing countries of billions of dollars worth of potential tax revenue, is known as tax "base erosion and profit shifting".[106]

77. The annual loss to Africa from transfer mispricing has been estimated at $38 billion, higher than the flow of development assistance to the region over the same period.[107] The problem is exacerbated by a lack of accessible information on "beneficial ownership" (the ultimate owner of companies, trusts and funds) and the fact that companies are not required to report systematically their income and activities on a country-by-country basis.

78. A new multilateral tax regime based on the premise of tax cooperation over competition is therefore urgently required. Existing mechanisms, such as the Committee of Experts on International Cooperation on Tax Matters, could play an important role with more dedicated support. Now is the time to take decisive action towards cooperation, guided by human rights principles.

V. Recommendations

79. **States must realize the full potential of tax collection as a tool to generate revenue for the fulfilment of human rights obligations and to redress discrimination and inequality. Human rights principles regarding participation, transparency, accountability and non-discrimination should be followed throughout the whole revenue-raising cycle. For this purpose, States should:**

(a) Seek to increase tax revenue in a manner compatible with their human rights obligations of non-discrimination and equality, and increase the allocation of revenues collected to budget areas that contribute to the enjoyment of human rights;

(b) Invest financial resources and political will in strengthening national tax authorities, ensuring that they have technical and budgetary autonomy and that their staff is professionalized;

(c) Increase reliance on personal and direct taxes, and design all taxes in ways that reduce regressive impact and gender bias;

(d) Carefully consider the income tax threshold to ensure that persons below or near the poverty line are not driven deeper into poverty by tax policies;

(e) Conduct human rights assessments of fiscal policy periodically and with broad public participation, including analysis of the distributional consequences and tax burden borne by different income sectors and disadvantaged groups;

(f) Review tax structures, codes and instruments for explicit and implicit gender bias and ensure they do not reinforce existing gender inequalities, including through their impact on unpaid care work;

(g) Ensure that people have access to all relevant data and information on fiscal policy and government revenues, including from the corporate sector, and include such information under right to information laws;

(h) Take measures to build the capacity of all people to understand fiscal policy options, and establish inclusive mechanisms to ensure that they are actively engaged in devising the most appropriate policy options;

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[106] Christian Aid, *False Profits: robbing the poor to keep the rich tax-free*, 2009.

[107] Africa Progress Panel, *Africa Progress Report* (see footnote 97), p. 65.

(i) Take strict measures to tackle tax abuse, in particular by corporations and high net-worth individuals;

(j) Institute fully transparent public oversight over the granting and monitoring of tax incentives, and conduct periodic assessments of social benefits and human rights compliance, informed by broad public participation, especially by individuals who will be most affected; and refrain from granting fixed-term tax holidays and tax stability agreements that may undermine accountability for evolving impact on human rights;

(k) Ensure accessible channels for accountability and remedy for any negative human rights impact of fiscal policy, including by strengthening the capacity of the judicial system and national human rights institutions to address fiscal policy;

(l) Ensure that extractive industries are subject to appropriate tax rates and export duties, and that the human rights of affected communities and future generations are protected in the exploitation of natural resources;

(m) Proactively disclose information on contracts, concessions and licensing agreements in the extractive sector and related information, including expected tax revenues and export royalty rates;

(n) Ensure the public revenue raised from the financial sector is commensurate to the sector's profitability and the risks it generates; implement a financial transaction tax, and consider allocating the revenues specifically to expenditure that can contribute to the realization of human rights;

(o) Implement regulations that prevent the role played by the financial sector in aiding tax evasion and profit-shifting.

80. With regard to international cooperation and extraterritorial impact, each State should refrain from any conduct that impairs the ability of another State to raise revenue as required by their human rights commitments, and cooperate in creating an international environment that enables all States to fulfil their human rights obligations.

81. For the above-mentioned purpose, States should:

(a) Actively pursue international cooperation in tax matters, working towards a multilateral regime for tax transparency that tackles tax abuse;

(b) Enact clear legislation and regulations to ensure that companies domiciled in their territory respect human rights in their operations everywhere, including in tax planning practices;

(c) Provide, when in a position and requested to do so, funding and technical assistance to strengthen the capacity of tax authorities in less developed countries to collect taxes and to adhere to international agreements that benefit them;

(d) Develop a system for more systematic and regular exchange of information between tax authorities, laying the foundations for an eventual multilateral, global system of automatic tax information exchange;

(e) Promote and engage in forums for tax cooperation that guarantee participation by developing countries; in particular, commit more resources to the Committee of Experts on International Cooperation in Tax Matters, support its upgrade to intergovernmental status, and support the implementation of its Model Tax Convention and the Code of Conduct on Cooperation in Combating International Tax Evasion and Avoidance;

(f) Adopt country-by-country reporting standards for all transnational corporations; in the case of extractive industries, also enforce project-by-project disclosure standards, such as those embodied in the Dodd-Frank Wall Street Reform and Consumer Protection Act and comparable European Union legislation, and apply them to all extractive industry companies listed on their stock exchanges;

(g) Adopt a framework that commits it to full disclosure of beneficial ownership of registered companies through national public registries;

(h) Include a commitment to align fiscal policy with human rights obligations as part of the post-2015 sustainable development framework, including by raising sufficient public revenue in equitable ways, allocating and spending revenue to realize human rights for all, and strengthening public oversight, transparency, participation in and accountability over fiscal policy, tackling tax evasion and illicit financial flows.

82. **The Special Rapporteur recommends that international economic bodies and financial institutions, in particular IMF, the European Union, the World Bank, the European Central Bank and the European Bank for Reconstruction and Development:**

(a) Consider human rights obligations and impact when setting conditions and policies in the area of fiscal policy; in particular, promote progressive rather than regressive taxation and ensure that all States are granted space to conduct counter-cyclical fiscal policies;

(b) Utilize their significant technical capacity to help Governments to broaden their fiscal space and redistributive capacities in accordance with their human rights obligations;

(c) Ensure that, when elaborating policy rankings, loan conditions or technical advice, these are not in conflict with the human rights obligations of the host State.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona

Addendum

Mission to Mozambique*,**

Summary

The Special Rapporteur on extreme poverty and human rights conducted an official visit to Mozambique from 8 to 16 April 2013. In the present report, she outlines the challenges facing Mozambique in implementing measures to tackle poverty and ensuring the human rights of those living in poverty in the country.

While the economic growth prospects of the country are excellent, the Special Rapporteur is concerned that the benefits thus far have not been widely shared, with large sectors of the population continuing to live below the poverty line. The increasing income gap between the rich and the poor, the lack of implementation of legislation and poverty reduction policies and the lingering risk of corruption all pose potential threats to stability.

The Special Rapporteur provides recommendations to ensure that relevant policies and programmes are implemented to enable those living in extreme poverty to enjoy their human rights on an equal basis with the rest of the population.

* Late submission.

** The summary of the present report is being issued in all official languages. The report, which is annexed to the summary, is being issued in the language of submission only.

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Annex

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Report of the Special Rapporteur on extreme poverty and human rights on her mission to Mozambique (8–16 April 2013)

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I. Introduction

1. At the invitation of the Government, the Special Rapporteur on extreme poverty and human rights visited Mozambique from 8 to 16 April 2013. During the visit she collected first-hand information on the situation of people living in extreme poverty as a means of conducting a human rights-based analysis of key public policies relating to poverty alleviation, development and social protection.

2. The Special Rapporteur met with the Minister for Foreign Affairs and Cooperation, the Minister for Education, the Minister for Justice, the Vice-Minister for Women and Social Action and the Vice-President of the Assembly of the Republic, along with the Parliamentary Committees for Constitutional Affairs, Rights, Freedoms and Guarantees and for Social Affairs. She also met with representatives from the Ministries of Health, of Labour and of Planning and Development, and the Governors and relevant local authorities of the Provinces of Gaza and Zambezia, including the Legal and Justice Councils.

3. The Special Rapporteur also held meetings with the National Human Rights Commission of Mozambique along with representatives of international organizations, donor agencies, financial institutions and a range of civil society organizations, as well as academics. In addition, she visited communities living in poverty in the provinces of Gaza (the cities of Xai Xai and Chibuto), Maputo City (the neighbourhoods of Xipamanine and Chamanculo) and Zambeiza (the cities of Quelimane and Nicoadala).

4. The Special Rapporteur extends her appreciation to the United Nations country team, and in particular the Office of the Resident Coordinator, for its indispensable assistance before and during the visit. She is also grateful to the other interlocutors she met, including members of civil society, for their invaluable contributions to the mission. She is especially grateful to those who took the time to share their personal experiences of struggling with the plight of extreme poverty and social exclusion in Mozambique.

II. General context

5. Following independence in 1975, Mozambique was faced with numerous, severe challenges hindering development, and a brutal civil war that ravaged the country for almost two decades. Mozambique overcame that difficult legacy to emerge as a politically stable democracy, with the Government embarking on a series of reforms that led to extraordinary progress and dramatic improvements in the economic growth rate of the country.

6. Mozambique has been ranked as one of the fastest growing economies in sub-Saharan Africa over the past two decades.[1] Recent economic growth has remained robust, despite severe flooding in early 2013.[2] With an expanding gross domestic product spurred by the extractive industries, financial services, transport and communications, and government services, the country's economy holds great promise and the Government of Mozambique has a unique opportunity to provide a better future for all Mozambicans.

[1] See International Monetary Fund (IMF), "Republic of Mozambique: Fifth review under the policy support instrument and request for modification of assessment criteria", IMF Country Report No. 13/1, 2013.

[2] IMF, "Republic of Mozambique: First review under the policy support instrument and request for modification of assessment criteria", IMF Country Report No. 14/20, 2014, p. 3.

7. Despite strong economic performance and two decades of peace and political stability, prosperity has not been inclusive. Economic growth has failed to reach the most disadvantaged in society and has not been leveraged into a significant reduction in poverty. Available data show that poverty reduction stagnated between 2002/03 and 2008/09.[3] In 2009, 54.7 per cent of the population lived below the national poverty line,[4] and Mozambique ranks 185th out of 187 countries according to the 2013 Human Development Index of the United Nations Development Programme (UNDP).[5] On the Multidimensional Poverty Index, Mozambique is ranked third for the highest headcount percentages of people in poverty (79 per cent) and is tied for the highest intensity of poverty, with about 65 per cent of the population facing deprivations in at least 33 per cent of weighted indicators in the period 2007–2011.[6]

8. During her visit the Special Rapporteur observed that as the income gap widens poverty is becoming entrenched, not only in rural areas where the majority of the population lives but also in urban centres.

9. The Special Rapporteur recognizes the significant challenges facing Mozambique in its endeavours to eradicate poverty, including the legacy of its colonial past and the war, along with current threats from natural disasters and the HIV/AIDS pandemic. She commends the important progress made in bringing the country to a new era of independence and stability, and the resulting economic growth. However, she urges the State to ensure that the political will and desire for a better future for Mozambique are reinvigorated with renewed purpose. Mozambique has enormous potential for growth and everyone in society, including those living in extreme poverty, must be allowed the opportunity to reap the benefits of prosperity.

III. Legal and institutional framework

10. In 1990, Mozambique adopted a new Constitution that for the first time introduced a multiparty political system, explicit guarantees of human rights protection, and the doctrine of the separation of powers. The Constitution was revised in 2004 and includes among its fundamental objectives: the building of a society of social justice and the achievement of material and spiritual well-being and quality of life for its citizens; the promotion of balanced economic, social and regional development in the country; and the defence and promotion of human rights and of the equality of citizens before the law.[7] International human rights obligations are also recognized as having the same force in the Mozambican legal order as legislative acts.[8]

11. Mozambique has demonstrated its commitment to the promotion and protection of human rights by ratifying important international human rights conventions, improving their implementation at the domestic level and engaging with various United Nations human rights mechanisms, including the universal periodic review process in 2011. The Special Rapporteur is concerned that Mozambique has not yet ratified the International Covenant on Economic Social and Cultural Rights and its Optional Protocol. That represents a major gap in the human rights commitment of Mozambique.

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[3] Mozambique, Ministry of Planning and Development, "Poverty and Wellbeing in Mozambique: Third National Poverty Assessment" (2010), pp. xi–xii.

[4] United Nations Development Programme (UNDP), *Human Development Report 2013* (2013), p. 160.

[5] Ibid., p. 143.

[6] Ibid., p. 27.

[7] Constitution of the Republic of Mozambique, art. 11.

[8] Ibid., art. 18.

12. The Constitution encompasses the right to equality and states that no discrimination shall be permitted on legislative, political, economic or social grounds.[9] Explicit protection is provided on the basis of colour, race, sex, ethnic origin, place of birth, religion, level of education, social position, the marital status of one's parents, profession or political preference. However, sexual orientation is not addressed as a prohibited ground for discrimination. The Special Rapporteur noted the call of the newly established National Human Rights Commission to incorporate into the Constitution a prohibition of discrimination on the grounds of sexual orientation.[10]

13. Mozambique has introduced policies and strategies aimed at achieving inclusive economic growth and poverty reduction, such as the Action Plan for the Reduction of Absolute Poverty (PARPA II) 2006–2009, and the Poverty Reduction Action Plan (PARP) 2011–2014. The Special Rapporteur is disappointed, however, by the findings of independent evaluations carried out in 2009 after PARPA II had been in operation for three years, indicating that less than 50 per cent of the objectives had been reached.[11]

14. The Special Rapporteur commends the establishment of the National Human Rights Commission and believes it will play an essential role in fortifying the commitment of Mozambique to guaranteeing respect for human rights and fundamental freedoms. She hopes that the Commission ensures that economic, social and cultural rights are included in its institutional mandate.

IV. General challenges

A. Corruption

15. Mozambique has introduced important reforms in recent years as a means of tackling corruption, including the ratification of the United Nations Convention against Corruption in 2008, the adoption of an anti-corruption package in November 2011 and the establishment of an ethics commission in January 2013. Good governance and the fight against corruption are also highlighted in PARPA II as key pillars in reducing poverty. Despite those commendable efforts, corruption is perceived to be rampant in Mozambique, as reflected in its ranking on the 2012 Corruption Perceptions Index of Transparency International: 123rd out of 182 countries.[12]

16. The Special Rapporteur was disappointed to learn that, despite donor pressure to enhance transparency and accountability, corruption continues to blight the country's administration, aided by gaps in the current legal framework.

17. While recognizing the steps taken by Mozambique to tackle corruption, the Special Rapporteur wishes to emphasize that corruption seriously undermines the State's capacity to fulfil human rights obligations, with a disproportionate impact on those living in poverty. The Special Rapporteur notes the effectiveness of zero-tolerance policies in ensuring transparency and accountability at all levels. Given the large investment projects in the

[9] Articles 35 and 39, respectively.

[10] Richard Lee, "Push for LGBTI rights in Moz Constitution", Open Society Initiative for Southern Africa, 16 May 2013. Available from www.osisa.org/law/mozambique/push-lgbti-rights-moz-constitution.

[11] "Mozambique: an irresponsible administration", in Social Watch, *Report 2012 – Sustainable Development: The Right to a Future*, p. 143.

[12] http://cpi.transparency.org/cpi2012/results/.

country, particularly in the extractive industries and mining sector, such steps may be necessary to ensure that the benefits of development are not diverted through illegal means.

B. Environmental issues

18. In the past 35 years, Mozambique has experienced more than 35 extreme weather and flooding events. Those events have had significant impacts on the population, exacerbated by widespread deep poverty and a lack of resilience.[13] Floods and cyclones have caused damage to infrastructure,[14] homes, and public buildings accommodating essential services.

19. The cumulative effects of recurrent extreme weather events and the associated costs of recovery measures have the potential to increase poverty, particularly in rural areas where the great majority of those living in poverty reside and where dependence on subsistence agriculture increases vulnerability to food insecurity. Droughts also have a disproportionate impact on residents of rural areas, forcing people to walk long distances in search of water for drinking and domestic purposes and increasing the number of children, in particular girls, who drop out of school to help support family livelihood activities.

C. Land rights, resettlement and displacement

20. Mozambique has also witnessed a dramatic change in its environmental landscape over recent years due to the increasing number of mining projects. The government mining registry, published in October 2012, indicates that at least 245 mining concessions and exploration licences were approved in Tete Provin alone.[15] The Special Rapporteur received information about the negative impact that some of those projects have had on communities living in the surrounding areas, including restrictions on access to land and natural resources.

21. The displacement of communities in order to make way for infrastructure or development projects potentially violates several human rights. A regulation to govern the process of resettlement resulting from economic activities was approved through Decree 31/2012 (appended to the Law on Territorial Planning of 2007). Despite those efforts to protect the rights of the displaced, reports suggest that the provision of poor quality agricultural land and inconsistent access to water have compromised the rights to food, water and work in many communities.[16] In addition, many agricultural families historically relying on farm plots for survival are confronted with new costs in paying for food, and additional unexpected expenses, such as paying for piped water.[17]

22. The Special Rapporteur is particularly concerned about reports that some megaprojects have led to so-called land grabbing, whereby large areas of land are bought up from smallholder farmers by mining companies, allegedly with the approval of the State, leading to forced displacement and destroyed livelihoods.[18]

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[13] Food and Agriculture Organization of the United Nations (FAO), *Adaption to Climate Change in Semi-Arid Environments: Experience and Lessons from Mozambique* (Rome, 2012), p. 2.

[14] Ibid.

[15] Human Rights Watch, *What Is a House without Food?* (2013), p. 6.

[16] Ibid., p. 5

[17] Ibid., p. 17.

[18] See for example GRAIN, "Leaked ProSAVANA Master plan confirms worst fears", available from www.grain.org/article/entries/4703-leaked-prosavana-master-plan-confirms-worst-fears.

V. Situation of groups particularly vulnerable to poverty

A. Women

23. As a party to the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, Mozambique has committed itself to promoting women's rights. Since independence there has been considerable progress in women's participation in decision-making at the national level, with women constituting 39 per cent of Parliament.[19] Progress has also been made at the executive and legislative levels, with Mozambique ranking second among African countries on the Global Gender Gap Index 2012 in relation to the political empowerment of women.[20] It should be noted that women remain underrepresented at the provincial and district levels.

24. Despite the gains made in political representation, social indicators demonstrate that women are lagging behind men in most social and economic measures. For example, Mozambique was ranked 125th in the UNDP Gender Inequality Index for 2013.[21] A deeply embedded patriarchal sociocultural order, along with a lack of implementation of laws and policies at the institutional level, has hindered significant and measurable progress towards gender equality. The Special Rapporteur was struck by the testimonies of women, from all spectrums of society, about the endemic structural gender discrimination that they experience.

25. Women in rural communities are particularly disadvantaged. The female labour force is heavily concentrated in agriculture, with 94 per cent of economically active women working in the farming industry.[22] Studies indicate that the number of female-headed households is increasing and that those households represent an increasing proportion of the poorest sections of the population. The feminization of poverty is in part due to the fact that, while more women are more involved in the agricultural sector than men, men are the principal owners of land. The Special Rapporteur observed that women in Mozambique have little control over or access to productive resources, and they are typically prevented from participating equally at the decision-making level, often being unaware of their legal rights, such as property and inheritance rights. Moreover, the bulk of unpaid care work, such as cooking, childcare and fetching water and fuel, is carried out by women and girls, with severe implications for their enjoyment of rights (see A/68/293).

26. Migration as a result of natural disasters has also had a differential impact on women, particularly those living in rural areas. Following the devastating floods of 2010, for example, many men were forced to migrate to either South Africa or larger cities in Mozambique in search of alternative employment, leaving women in charge of the household for long periods. Women in those situations not only have to deal with an increased workload, but also the social and emotional consequences that accompany post-disaster situations, including the loss of loved ones, disease and scarcity of food and water.[23]

27. Limited access to basic social services, including health care and education, is a major obstacle to women's enjoyment of rights. Despite significant progress, maternal

[19] World Bank, Proportion of seats held by women in national parliaments, figures for 2012. Available from http://data.worldbank.org/indicator/SG.GEN.PARL.ZS.

[20] World Economic Forum, *The Global Gender Gap Report 2012*, p. 16.

[21] UNDP, *Human Development Report 2013*, p. 159.

[22] FAO, *The State of Food and Agriculture: Women in Agriculture, Closing the Gender Gap for Development* (2011), p. 104.

[23] FAO, *Adaptation to Climate Change*, p. 27.

mortality is high, particularly in rural areas where the great majority of women have no access to quality care or specialized health professionals (including maternal and infant health nurses).[24]

28. While the Special Rapporteur recognizes the State's investment in girls' education, significant challenges remain.[25] Sexual abuse from teachers and male students, along with an inadequate quality of instruction, lead to high failure and dropout rates, with only 74.4 per cent of girls completing primary education.[26] Owing to structural discrimination, only 47.2 per cent of women in Mozambique are literate (only 31.3 per cent in rural areas).[27] As a result, they have fewer opportunities for formal or informal employment and are obstructed from overcoming poverty and improving their enjoyment of rights.

29. The structural discrimination against women is also reflected in the higher prevalence of HIV/AIDS among women, who account for more than half the adult population living with the disease. Women are more vulnerable to infection because they often lack the power or status to choose their partners, or to insist on safe sex. Girls and young women are particularly vulnerable. As a result of stigma and discrimination, women with HIV/AIDS are often expelled from their homes by their husband or family, leaving them highly vulnerable to extreme poverty and destitution.[28]

30. Gender-based violence remains a serious problem in the country.[29] Despite the establishment of a political and legal framework to address the issue, including a law against domestic violence (2009), as well as the establishment of specialized police services and a referral system offering assistance to victims, the Special Rapporteur is concerned about the lack of effective implementation.

B. Children

31. Children, who numbered 11.8 million according to the 2007 census, make up more than half of the Mozambican population. By ratifying the Convention on the Rights of the Child in 1994, Mozambique committed itself to guaranteeing their rights without discrimination of any kind. While important steps have been taken to adopt legislative and other measures to protect children, more must be done to ensure that the rights enshrined in existing legislation become reality. Poverty continues to affect millions of children in Mozambique, with almost half of children experiencing severe deprivation.[30]

32. The Special Rapporteur recognizes the improvements over recent years: fewer children die before reaching the age of 5 and more children are enrolled in school, have access to health services and are protected from abuse.[31] However, she is concerned that striking disparities remain in the country, with children in rural areas and the central and

[24] Mozambique, Ministry of Planning and Development, *Report on the Millennium Development Goals* (2010), pp. 35-37 and 67.

[25] Ibid., p. 38.

[26] United Nations Mozambique, *Child Poverty and Disparities in Mozambique 2010: Summary Report* (United Nations Children's Fund (UNICEF)), p. 24; Mozambique, *Report on the Millennium Development Goals*, p. 40.

[27] Mozambique, *Report on the Millennium Development Goals*, p. 45.

[28] Lauren Hendricks and Patrick Meagher, "Women's property rights and inheritance in Mozambique: report of research and fieldwork", CARE Economic Development Unit Learning Series No. 1 (2012), p. 2.

[29] United Nations Mozambique, *Child Poverty* (summary), p. 24.

[30] Ibid., p. 5.

[31] Ibid., pp. 3 and 9.

northern provinces faring worse than their urban counterparts. Inadequate access to clean water and sanitation facilities and medical services, along with high levels of undernutrition, results in one of the highest rates of stunting in the world (44 per cent of children under 5 years of age).[32] The Special Rapporteur is encouraged by the Government's current five-year plan, which includes an indicator on stunting and calls for the drafting of a multisectoral action plan to reduce chronic undernutrition.

33. The effect of HIV/AIDS on children is devastating, with an estimated 19,000 child deaths due to AIDS in 2008[33] and 180,000 children under 14 living with HIV.[34] The number of orphans and vulnerable children in Mozambique whose situations are due to HIV/AIDS is estimated to be 740,000.[35] Those children are vulnerable to abuse, neglect and exploitation and have limited prospects, given that they may have to stay at home to care for siblings, are less likely to enrol in school and may be more susceptible to early sexual activity, leaving them at an increased risk of being infected by HIV themselves. Children orphaned by HIV/AIDS, or who are living with sick or dying parents, often suffer discrimination at the societal and community levels, but also within their own extended families.[36]

34. Mozambique has one of the highest rates of child marriage in the world, with 38 per cent of girls 15 to 19 years old being mothers or pregnant in 2011.[37] Data from 2008 demonstrates that 18 per cent of girls aged 20 to 24 were married by age 15, while 52 per cent of them were married before the age of 18.[38] Those girls have little or no access to information on reproductive health, leaving them vulnerable to adolescent pregnancy and sexually transmitted diseases, including HIV/AIDS. Child marriage and adolescent pregnancy also result in low secondary school enrolment and completion rates for girls.[39]

35. The Special Rapporteur commends the progress made in guaranteeing the right of children to education, but significant deficiencies still exist, particularly in relation to secondary education. Reports indicate that only 20 per cent of children aged 13 to 17 attend secondary school.[40] Girls are also more likely to experience educational deprivation than boys, due to various reasons, including child marriage, teenage pregnancy and sexual abuse within the school environment.[41] Despite progress, the number of schools is still inadequate, and in several parts of the country infrastructure is still lacking. The low quality of education, particularly in rural provinces, is of particular concern and poor, rural children are less likely to complete primary education.[42]

36. The prevalence of violence, sexual abuse and harassment within the school environment has had a shattering effect on the lives of many children. Alarmingly, in one survey, 70 per cent of girl respondents reported that some teachers use sexual intercourse as

[32] Ibid., p. 9.
[33] Ibid., p. 30.
[34] Joint United Nations Programme on HIV/AIDS (UNAIDS), HIV and AIDS estimates: Mozambique. Available from www.unaids.org/en/regionscountries/countries/mozambique/.
[35] Ibid.
[36] Mozambique, National AIDS Council, *2012 Global AIDS Response Progress Report*, pp. 107–108.
[37] Mozambique, National Statistics Institute and Ministry of Health, *Inquérito Demográfico e de Saúde 2011* (2013), p. 83.
[38] Mozambique, National Statistics Institute, "Final report of the Multiple Indicator Cluster Survey, 2008", pp. 106–108.
[39] Louise Fox and others, *Education Reform in Mozambique: Lessons and Challenges* (World Bank, 2012), pp. 38 and 77–78.
[40] UNICEF input on Mozambique for the universal periodic review, 2011, p. 5.
[41] United Nations Mozambique, *Child Poverty* (summary), pp. 19–22.
[42] Ibid., p. 18.

a condition for promotion between grades, and 50 per cent stated that they faced sexual abuse from teachers or boys in their peer groups.[43] Often those crimes go unpunished, as girls are unwilling to report abuse or are prevented from doing so by fear of retribution. In addition, the decision of parents to send their daughters to school is greatly influenced by this phenomenon, reducing the future prospects for girls. While the Special Rapporteur is encouraged by an increase in reporting and the Government's zero tolerance policy, she is concerned at the apparently increasing prevalence of such abuse.[44] More must be done to hold perpetrators accountable and ensure the right of girls to enjoy an education without violence, harassment or fear.

37. The Special Rapporteur is concerned at reports that girls are often forced to move to night schools when they become pregnant,[45] and at order (*despacho*) 39/GM/2003, issued in 2003 by the Ministry of Education, which prohibits pregnant girls from attending day classes. Those measures aggravate the stigma they experience and have a detrimental impact on their ability to complete their education.[46]

C. Older persons

38. A total of 5 per cent of the Mozambican population is above the age of 60, giving it the third-largest older population in Southern Africa.[47] The Special Rapporteur welcomes the recent Law on the Promotion and Protection of Older People's Rights (2013) and encourages the State to take immediate steps to implement the measures set out in the legislation as a matter of priority.

39. Immediate measures must be taken to support older persons caring for orphaned children. They often live in extremely precarious circumstances, dealing with their own health concerns (8.5 per cent of people between 50 and 65 years old in Mozambique are HIV-positive)[48] but also having to provide and care for children. Older people, in particular women, lack sufficient income to support themselves and their dependents, and small measures can make a big difference to their quality of life. The provision of adequate nutrition or transportation costs to the nearest health centre, for example, would greatly improve their situation. Many older persons are illiterate and have limited alternative means of income. The Special Rapporteur encourages an expanded emphasis on integrating older persons into adult literacy programmes.

40. The Special Rapporteur was informed that older women are often left to survive in situations of poverty, isolated from the community and stigmatized as a result of cultural beliefs and accusations of witchcraft. Older women who have lost their husband tend to be excluded from the extended family and are considered a burden on the community.[49]

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[43] Ibid., p. 24.

[44] The number of cases rose from 3,500 in 2005 to 7,000 in 2012. Source: Ministry of the Interior, 2005–2012.

[45] Francesca Salvi, "Millennium Development Goals' Perverse Effects: Bridging the Gender Gap in Education in Mozambique", British Association for International and Comparative Education website. Available from http://baice.ac.uk/2014/millennium-development-goals-perverse-effects-bridging-the-gender-gap-in-education-in-mozambique/.

[46] M. Justiniano and others, "Multifaceted challenges: a study on the barriers to girls' education, Zambezia Province" (Maputo, 2005), p. 22.

[47] Institute of Social and Economic Studies, "Population ageing in Mozambique: threat or opportunity?", presentation at the Week of Social Protection, Maputo, 18–22 June 2011.

[48] HelpAge International, *Strengthening the Response: Older People in the Response to HIV and AIDS in Mozambique* (Tete, 2010), p. 3.

[49] Carmeliza Rosário, Inge Tvedten and Margarida Paulo, *"Mucupuki": Social Relations of Rural-*

Reports suggest that the practice by which the extended family expropriates household property from the widow continues to affect many women, who are forced to take a subordinate position within the family circle after losing their property.[50] With 95 per cent illiteracy rates and a lack of education, financial capacity or legal empowerment, those women do not have the resources to defend their tenure.[51]

41. The right to health remains unrealized for many of the most marginalized older women and men. Older people in Mozambique are legally exempted from paying for medication at health centres. However, reports suggest that the exemption is often not honoured, with 86 per cent of older people in Gaza Province paying a consultation fee, and 85 per cent paying for medication when visiting health centres.[52]

42. The Special Rapporteur recognizes the significant advances that have been made in establishing a social assistance programme to benefit older persons through the Programa de Subsídio Social Básico. She remains concerned that Mozambique does not have a social pension programme offering extensive coverage or a dignified standard of living to older persons. While the efforts of the Government to expand and improve the programme by establishing transparent and accountable systems are commendable, capacity must be strengthened to implement the programme and ensure that the benefits are at least sufficient to cover the basic needs of families receiving it. Mozambicans must not face old age without the guarantee of a minimum income, vulnerable to poverty and marginalization.

D. Persons with disabilities

43. Mozambique ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol in 2012, a move the Special Rapporteur applauds. It is estimated that persons with disabilities in Mozambique represent 9.9 per cent of the population.[53] Efforts to improve living conditions for persons with disabilities include the National Plan of Action on Disability (2006–2010) and the Plan of Action for Orphaned and Vulnerable Children.

44. Despite those efforts, the Special Rapporteur notes that the living conditions of people with disabilities are generally much more precarious than those of the rest of the population. The 1997 Census found that 80 per cent of disabled people lived in rural areas, where their situation is compounded by a lack of physical and economic access to basic services, such as medical care and education,[54] and long waiting periods for treatment.[55] Moreover, persons with disabilities suffer from considerable discrimination and stigmatization,[56] often facing scorn and contempt from their fellow citizens.[57]

Urban Poverty in Central Mozambique (Chr. Michelsen Institute, 2008), p. 57.

[50] Hendricks and Meagher, "Women's property rights", p. 2.

[51] HelpAge USA, "Security of tenure for older women", p. 1.

[52] HelpAge International, "The right to health in old age: unavailable, inaccessible and unacceptable" (2011), second page.

[53] Leonard Cheshire Disability and Inclusive Development Centre, "Disability policy audit in Namibia, Swaziland, Malawi and Mozambique" (2008), p. 81.

[54] Ibid.

[55] Kerry Selvester and others, "*Transforming Cash Transfers: Beneficiary and Community Perspectives of the Basic Social Subsidy Programme in Mozambique*" (2012), p. 33.

[56] Leonard Cheshire Disability and Inclusive Development Centre, "Disability policy audit", p. 14.

[57] Assistance Network for Landmine Victims (RAVIM) and Handicap International Mozambique, *People with Disabilities in the Suburban Areas of Maputo and Matola* (2010), p. 30.

45. Children with disabilities are of particular concern as societal attitudes, often based on traditional beliefs, result in the majority of them being kept hidden behind closed doors.[58] A lack of teaching professionals for children with special needs, along with limited resources, prevents children with disabilities from accessing basic education and integrating into society.[59] The Special Rapporteur is concerned about the lack of a robust effort by the Ministry of Women and Social Action to ensure that children with disabilities are integrated into preschool activities and that they are covered by social protection measures, to encourage their assimilation into society.

46. Heightened risk factors, combined with major problems in gaining access to prevention and screening services and an extremely low level of awareness, make persons with disabilities particularly vulnerable to contracting HIV/AIDS.[60] One study found that 57 per cent of disabled persons interviewed in Maputo and Sofala were at risk of contracting HIV/AIDS, while 84 per cent did not know what it was.[61] Such is the discrimination faced by disabled people in Mozambique that many are reluctant to take HIV tests for fear that testing positive would expose them to a secondary stigma, thus creating additional barriers to their already limited access to essential services.[62]

VI. Challenges to the enjoyment of specific rights by those living in poverty

A. Right to health

47. Following the end of the war in 1992, Mozambique introduced the Health Sector Reform Programme, aimed at providing access to good quality health care for everyone, with strong investment from the State and external donors providing budgetary support.[63] The Special Rapporteur is concerned at reports suggesting that there was a decrease in the financial resources allocated to the health sector from 13.4 per cent in 2006 to 8.4 per cent in 2010.[64]

48. While there has been considerable progress in improving access to health services, Mozambique faces major public health challenges. The overall health status of the population remains lower on average than that of other countries in the region and significantly below international standards.[65] High maternal and infant mortality rates, the prevalence of communicable diseases, including HIV/AIDS and malaria, and high levels of chronic malnutrition have resulted in an average life expectancy at birth of 53 years.[66]

49. Gender, socioeconomic status and geographic location all influence access to good quality health care, with poor households experiencing the most obstacles.[67] In 2011,

[58] Ibid., pp. 28–30.
[59] Ibid., p. 51.
[60] Disability and Development Partners, "Disability and HIV and AIDS in Mozambique" (2008), pp. 23–24.
[61] Leonard Cheshire Disability and Inclusive Development Centre, "Disability policy audit", p. 84.
[62] Disability and Development Partners, "Disability and HIV", p. 21.
[63] Including PARPA II and PARP (2011–2014).
[64] United Nations Mozambique, *Child Poverty and Disparities in Mozambique 2010* (full report) (UNICEF, 2010), p. 78.
[65] Muriel Visser-Valfrey and Mariam Bibi Umarji, "Sector budget support in practice: Mozambique health sector case study" (Overseas Development Institute, 2010), p. 18.
[66] World Health Organization, *World Health Statistics 2013*, p. 54.
[67] United Nations Mozambique, *Child Poverty* (full report), p. 3.

89.5 per cent of women in the upper wealth quintile gave birth in a health facility attended by skilled personnel, compared to 31.5 per cent of women in the lowest quintile.[68] Similarly, reports suggest that wealthier children are more likely to receive treatment for certain illnesses (such as acute respiratory infections) than those from rural areas, poor families or families in which mothers had no education.[69]

50. The Special Rapporteur is particularly concerned about the situation facing rural women as regards access to sexual and reproductive health care. High maternal mortality and morbidity is a product of structural discrimination against women and denial of their human rights, including sexual and reproductive health rights. During the visit, the Special Rapporteur witnessed the obstacles that women face in gaining access to adequate antenatal, delivery and postnatal care, as well as the inadequacies of some of the local health-care centres. During her interviews with women, lack of transportation and having to walk long distances to health centres, out-of pocket costs and perceived bad quality of care were highlighted as factors that discouraged them from accessing health-care facilities.

51. Such experiences are reflected in data which show that 43 per cent of maternal deaths occur during delivery or within 24 hours after delivery, while in the primary-level health units, death occurs with greater frequency in the first two hours after the woman's admission, indicating bad conditions at the centres and the fact that many women arrive too late for early intervention.[70] The lack of equitable distribution of health-care facilities, goods and services and their unavailability in rural and remote areas are a particular concern, in particular with respect to the lack of available and physically accessible emergency obstetric care for most women.

52. Despite the introduction of the Family Planning and Contraception Strategy in 2011, and a contraceptive prevalence rate (the percentage of women who are using, or whose partner is using, a contraceptive method) that has virtually tripled in the last 20 years,[71] less than a fifth of the female population in Mozambique uses contraception.[72] Women living in poverty have limited access to contraception and family planning.[73] Just 5 per cent of women with no education use modern contraceptive methods, compared to 47 per cent of women with secondary education or higher. Only 7 per cent of women in rural areas use contraception.[74] Despite those stark variations, efforts to bring reproductive health information and services to the rural population are few. Goods and services related to sexual and reproductive health continue to be viewed as commodities to be allocated by the market or as charity, rather than as fundamental rights.

53. Cultural factors and taboos play a significant role in determining the relationship between sexual and reproductive health and human rights. For example, although the law provides for the freedom to receive health-care services from any source, in practice many women need permission from their husbands or another relative before seeking treatment.[75] The State has a role to play in bridging cultural and economic divides to provide comprehensive reproductive education, ensuring access to affordable and accessible contraception and eliminating gender norms that increase the likelihood of early pregnancy, sexual violence and transactional sex.

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[68] Ibid., p. 69.

[69] Ibid., p. 73.

[70] Mozambique, *Report on the Millennium Development Goals*, p. 60.

[71] African Union and others, *Assessing Progress in Africa toward the Millennium Development Goals: MDG Report 2012* (Economic Commission for Africa, 2012), p. 74.

[72] World Bank, "Reproductive health at a glance: Mozambique" (2011), second page.

[73] African Union and others, *Assessing Progress*, p. 75.

[74] World Bank, "Reproductive health", second page.

[75] CEDAW/C/MOZ/1-2, p. 44.

54. The considerable knowledge-behaviour gap in terms of condom use for HIV prevention has undermined the fight against HIV/AIDS.[76] While there has been progress since 2003, when only 53 per cent of women were aware of condom use as a method of HIV prevention, there was a significant reduction in the availability of condoms in the country between 2009 and 2011.[77] Reports suggest that this is a result of reduced demand, weak distribution systems and a reduction in the availability of funds.[78] Traditional and cultural norms perpetuate the non-use of condoms, as well as women's lack of power to negotiate safe sex, transactional sex and intergenerational sex.

55. The Special Rapporteur is concerned about the availability of HIV tests, as well as the limited access to and coverage of antiretroviral treatment, particularly for children.[79] During the mission, the Special Rapporteur visited a rural health clinic and witnessed the limited equipment available for carrying out tests for HIV. She was also informed that many patients have to walk long distances in order to reach the clinic and receive treatment.

56. During her visit, the Special Rapporteur met with a group of young people who work on a voluntary basis to raise awareness of sexual and reproductive rights among their peers. She was extremely impressed by their dedication, but finds it unfortunate that the State has not done more to implement nationwide awareness-raising campaigns on sexual and reproductive health.

B. Right to access to justice

57. Access to justice is a fundamental right and essential for the protection and promotion of all civil, cultural, economic, political and social rights (see A/67/278). Mozambique has an obligation to ensure that conditions are in place for all persons to have access to justice, irrespective of their level of education, economic situation or social status. In recent years a number of initiatives have been taken by the State to improve access to justice, including the establishment of the Legal Aid Institute (IPAJ), which provides free legal assistance to economically disadvantaged citizens.[80] The Ministry of Justice has also been promoting a policy to construct palaces of justice at the district level, which will house the offices of the District Prosecutor, the Criminal Police, the court and IPAJ under the same roof.

58. Despite those efforts, access to justice remains a significant problem, particularly for vulnerable groups.[81] Those living in rural areas are especially disadvantaged, as judicial officials in those areas have limited resources and little or no means of community outreach, in part owing to bad infrastructure. Generally, formal procedures are lengthy and costly, and the judicial system is also reportedly beleaguered by corruption.[82] As a result, many citizens continue to rely on alternative informal or traditional mechanisms of dispute resolution,[83] which may not conform to human rights standards or constitutional principles. The Government recognizes that the justice system currently remains inaccessible to

[76] World Bank, "Reproductive health", third page.
[77] Mozambique, *2012 Global AIDS Response*, pp. 97 and 99.
[78] Ibid., p. 99.
[79] Ibid., p. 23.
[80] IPAJ officials and legal and paralegal personnel are present in 120 of the 128 districts; a plan was established with a view to expanding coverage to the entire territory by the end of 2013.
[81] A/HRC/WG.6/10/MOZ/2, para. 43.
[82] Thea Hilhorst and Nicolas Porchet, "Food security and land governance fact sheet: Mozambique", Land Governance for Equitable and Sustainable Development and the Royal Tropical Institute, p. 5.
[83] Ibid., p. 9.

substantial parts of the population and has committed itself to strengthening the capacity and accessibility of the formal justice system.

59. The Special Rapporteur welcomes the adoption of the Juvenile Justice Law of 2009, which places the age of criminal responsibility at 16 years; however, it seems that much remains to be done to ensure the full compliance of the juvenile justice system with international human rights standards. Young detainees are regularly detained in adult prisons even though the law stipulates that they should be placed in separate detention facilities.[84] Although juvenile criminal suspects may be legally detained for a maximum of 30 days,[85] the Special Rapporteur learned during her visit that they are often detained for much longer. Currently there are no functioning juvenile detention centres for children awaiting trial or otherwise in conflict with the law.[86] Some progress has been made, however, through the introduction of a children's section in courtrooms in three provinces in the country.

C. Right to adequate housing and access to land

60. The right to access to land is essential for reducing poverty in Mozambique, given that 61 per cent of the population live in rural areas and depend principally on subsistence farming for a living.[87] The Special Rapporteur commends the efforts made by the State to introduce a legal framework governing land distribution. Indeed, the Land Law of 1997 (Law 19/97) has been lauded as one of the most progressive and gender-sensitive in the region.[88]

61. While the intention of the Land Law should be commended, implementation has been slow and largely ineffective. A lack of capacity at the State level,[89] a general lack of awareness of rights and participation at the community level and failure by local government and prospective land developers to recognize the extent of community land holdings have resulted in frequent land disputes or other tensions.[90] Land disputes in rural areas are particularly common where traditional territory may be infringed upon as a result of concessions granted to developers.[91]

62. According to article 100 of the Constitution, the State owns all land in Mozambique. The Land Law recognizes the right to use land, known by the Portuguese acronym DUAT.[92] Most rural land is held by communities, which have perpetual DUATs based on their traditional occupancy.

63. Land has not necessarily been distributed in compliance with human rights principles and decisions on land ownership often discriminate against disadvantaged

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[84] United Nations Mozambique, *Child Poverty* (full report), p. 149.

[85] Ibid.

[86] Ibid.

[87] FAO, *The State of Food and Agriculture*, pp. 90 and 111.

[88] Randi Kaarhus with Selma Martins, *How to Support Women's Land Rights in Mozambique?* (Oslo, Norwegian Agency for Development Cooperation, 2012), p. 4.

[89] Hilhorst and Porchet, "Food Security", p. 1.

[90] Ibid.

[91] United States Agency for International Development (USAID), "Property rights and resource governance: Mozambique" (2011), p. 11.

[92] *Direito de uso e aproveitamento dos terras* (right to use and profit from the land). That right is obtained through: (a) occupancy of land according to customary norms and practices; or (b) good faith occupation of land for 10 years.

groups.[93] Women are particularly vulnerable, despite the provisions in the 1997 Land Law enshrining women's right to participate in all land-related decisions and the right to register DUATs individually. Often unaware of their legal rights, women are constrained by customary norms that continue to limit their social and economic rights, including access to land and secure tenure.[94] The chapter on succession in the Portuguese Civil Code of 1966 continues to be applied in court cases, favouring the inheritance rights of men over women.[95]

64. In the majority of communities, men control land rights and women are only able to gain access to land through men, often via community-based committees. However, women often have limited access to the committees because they have no identity documents.[96] Many women feel powerless to oppose male relatives in such situations, given discriminatory sociocultural norms.[97] The phenomenon is not limited to rural communities; studies show that women in urban areas suffer similar obstacles to and violations of their property rights.[98]

65. While the Constitution recognizes the right to housing, the issue of adequate quality and quantity of housing remains a concern (A/HRC/WG.6/10/MOZ/2, para. 67). The demand for housing in Mozambique is increasing, with migration to urban areas putting pressure on resources. Three quarters of urban dwellers are regarded as informal settlers,[99] and most do not know that they must register land transactions, a cumbersome and costly process.[100] Formal access to land is out of reach for the majority, with the urban poor who inhabit the outskirts of the cities depending on subsistence agriculture or informal employment.[101]

66. The Special Rapporteur met with families living in rural areas and in informal settlements in Maputo City and witnessed the extremely precarious situations in which they are forced to live. With insufficient access to electricity and water and almost no access to sanitation facilities, public transportation and other public services, those families risk being among the estimated 17,000 people who die annually in Mozambique as a result of a lack of basic essential services.[102] This tragic reality highlights the need for the State to ensure adequate housing for all, which would encompass legal security of tenure, affordability, accessibility and availability of services, materials, facilities and infrastructure.[103]

D. Right to social security

67. The social protection system of Mozambique is currently undergoing a process of reform and modernization.[104] In recent years a number of legislative and political measures have been introduced to expand and improve social protection, including approval of a new

[93] A/HRC/WG.6/10/MOZ/2, para.46.
[94] USAID, "Property rights", p. 9.
[95] Ibid.
[96] Hendricks and Meagher, "Women's property rights", p. 4.
[97] Ibid.
[98] Ibid., p. 3.
[99] USAID, "Property rights", p. 5.
[100] Ibid., p. 10
[101] Ibid., p. 5.
[102] A/HRC/WG.6/10/MOZ/2, para. 67.
[103] Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing, para. 8.
[104] Selvester and others, *Transforming Cash Transfers*, p. 13.

regulatory framework in 2009 and the adoption of the National Strategy for Basic Social Security (ENSSB) in 2010.[105] Both were preceded by the Social Protection Law of 2007 (Law 4/2007) and together provide a comprehensive legal framework for a system offering universal protection. The Strategic Operational Plan of 2011 implements the ENSSB through 2014, providing for a direct cash transfer programme, direct employment in public works programmes and short-term support for vulnerable households.[106]

68. The Special Rapporteur commends the Government's commitment to improving social protection as a means of reducing poverty and welcomes the broad consultation and participation during the national policy dialogue on this issue.[107] She notes however that in order to build on those achievements the reform process must give due consideration to implementation gaps within the current system that have prevented the poorest and most marginalized sectors of society from enjoying their right to social security.

69. One of the greatest challenges facing Mozambique is the small proportion of people covered by social protection policies.[108] In 2010, Mozambique spent 3.7 per cent of its gross domestic product on social protection; overall social protection expenditure in Mozambique is lower than the average of other countries in the region.[109] Social protection insurance is restricted to resident salaried workers, civil servants and military officials and their families. In 2011, only 4.3 per cent of the economically active population benefited from social protection, while only 12 per cent of those over 60 years old were covered by a pension.[110] An overall lack of coordination and fragmentation of the social protection system, as well as gaps in legislation, have resulted in the majority of poor households, including families with children, youths and persons of working age, receiving little or no benefit from the system.[111]

70. Although the cash transfer programme (Programa de Subsídio Social Básico, PSSB) has been rapidly expanded to target extremely poor households in which no adult is able to work, such as those in which the adults are elderly or persons with disabilities, it does not cover all communities within each district or region.[112] Conditions for social protection coverage are not uniform across districts and a determination of eligibility in one district may not be respected in another. Often there is little or no coordination between the National Institute for Social Action (INAS) and community-based organizations (*permanentes*) tasked with assisting in the identification of beneficiaries and informing them of payment dates.[113] Indeed, due to logistical and budgetary constraints, beneficiaries are often informed of payment dates for monthly payments only a day or two in advance, limiting collection possibilities for many households.[114] A general lack of awareness about the procedures and processes often prevents eligible beneficiaries from accessing payments.

71. Although the PSSB is essentially an unconditional cash transfer targeting poor households with no labour capacity, the Special Rapporteur is concerned that it currently provides little or no coverage for persons with disabilities. While 95 per cent of PSSB

[105] Nuno Cunha and others, "Towards a Mozambican social protection floor", ESS Paper No. 41, International Labour Organization (2013), p. 1.
[106] Ibid., p. 1.
[107] Ibid., p. iv.
[108] Miguel Mausse and Nuno Cunha, "Setting up a social protection floor", in *Sharing Innovative Experiences. Volume 18: Successful Social Protection Floor Experiences* (UNDP, 2011), p. 317.
[109] Cunha and others, "Towards a Mozambican Social Protection Floor", p. 15.
[110] Ibid., p. 11.
[111] Ibid., p. 17.
[112] Ibid., p. 23.
[113] Selvester and others, *Transforming Cash Transfers*, p. 23.
[114] Ibid., p. 25

beneficiaries were destitute elderly persons,[115] only 5 per cent of the beneficiary households reached by the system in 2012 included persons with disabilities.[116] One of the reasons for this may be gaps in the referral system whereby health professionals who are responsible for certifying the clinical status of persons with disabilities do not communicate effectively with INAS.[117] There is also insufficient inclusion of the chronically ill and vulnerable children in the system. The programme also reportedly only extends to a subsection of eligible households, while the value of the cash transfers have been eroded by inflation.[118]

72. The Special Rapporteur is concerned about reports of corruption within the system whereby those responsible for targeting (*permanentes* and INAS staff) are often subject to social and political pressure to allow non-eligible households to be admitted to the PSSB programme.[119] A lack of transparency with regard to selection criteria has led to a general lack of understanding as to why some households living in poverty are able to register while others are not. In some cases eligible beneficiaries are reluctant to question irregularities regarding their rights to certain benefits owing to a fear of reprisals from their local community leaders or *permanentes*.[120] Such a situation is unacceptable.

VII. International assistance and cooperation

73. Despite the economic growth in recent years, development partners and donors are still crucial to poverty reduction and equitable growth efforts in Mozambique. In 2012, foreign aid constituted almost 50 per cent of the State budget.[121] While welcoming the substantial efforts of the international community to provide financial and technical assistance to Mozambique in line with their international human rights obligations, the Special Rapporteur calls on the international community to ensure consistency and to implement and guarantee a long-term strategy.

74. When providing assistance for social protection schemes, donors must ensure that their initiatives are well-coordinated, foster more comprehensive coverage, reduce duplication and promote genuine dialogue with the beneficiaries. The Special Rapporteur also underscores that international aid must build political support and country ownership. As Mozambique enters a new era of economic growth, international cooperation will remain crucial, particularly in relation to the enhancement of social policies and further development of the legal and institutional framework for human rights in the country. The Special Rapporteur urges donors to continue to provide the necessary funds to assist with the development of a comprehensive poverty reduction programme.

75. While the Special Rapporteur recognizes that Mozambique has generally enjoyed good relations with its partners and has made effective use of aid,[122] she is concerned by reports that some donors have expressed reluctance to provide aid to the country in future owing to claims of misappropriation of funds and corruption.

[115] Cunha and others, "Towards a Mozambican social protection floor", p. 12.
[116] Selvester and others, *Transforming Cash Transfers: Mozambique*, p. 25.
[117] Ibid., p. 41.
[118] Cunha and others, "Towards a Mozambican social protection floor", p. 13.
[119] Selvester and others, *Transforming Cash Transfers*, p. 39.
[120] Ibid.
[121] Justiça Ambiental and União Nacional de Camponeses, *Lords of the Land: Preliminary Analysis of the Phenomenon of Land Grabbing in Mozambique* (Maputo, 2011), p. 8.
[122] Visser-Valfrey and Umarji, "Sector budget support", p. 28.

VIII. Conclusion and recommendations

76. While the Special Rapporteur recognizes the remarkable achievements made by Mozambique in the fight against poverty in the aftermath of colonial rule and a devastating civil war, considerable challenges remain. Much of the population continues to live in poverty, with a majority of the people struggling to survive in dire conditions. The increasing income gap between the rich and poor, a lack of implementation of legislation and poverty reduction policies and the lingering risk of corruption all pose potential threats to stability.

77. As Mozambique enters a period of economic growth, there is a real and tangible opportunity to eradicate extreme poverty, with great potential for future shared prosperity for everyone. The effective implementation of poverty reduction strategies must be considered as a matter of priority.

78. While the present report includes recommendations in each of its sections, the Special Rapporteur would like to especially urge the Government of Mozambique to take the steps listed below to improve the enjoyment of rights by the poorest sectors of society.

Legal and institutional framework

79. The Special Rapporteur recommends that the Government:

(a) Ratify the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol without delay;

(b) Ensure the proper implementation of existing laws by strengthening monitoring and accountability mechanisms, and ensure that laws currently under revision are in line with international human rights standards;

(c) Ensure that adequate resources are provided to implement the poverty reduction measures outlined in the Poverty Action Reduction Plan;

(d) Revise the definition of discrimination in the Constitution and the Penal Code in line with international human rights instruments in order to prohibit all forms of discrimination, including on the basis of sexual orientation and gender identity, and develop effective mechanisms to provide access to justice and remedies in cases of violation of those rights;

(e) Immediately approve the rules and procedures necessary to ensure that the National Human Rights Commission is a fully functioning and independent body in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), with sufficient human and financial resources to carry out its work.

Corruption

80. The Special Rapporteur recommends that the Government:

(a) Strengthen cooperation between the Central Office for Combating Corruption and other law enforcement agencies;

(b) Adopt legislation on access to information and on the protection of whistle-blowers.

Environmental issues, land rights and resettlement

81. The Special Rapporteur recommends that the Government:

(a) Implement the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security;

(b) Ensure that communities affected by resettlement efforts can meaningfully participate in all stages of the resettlement process, including by providing them with information in an accessible and timely manner;

(c) In cases of resettlement, ensure strategic land-use planning and urban planning; guarantee housing and basic services, including access to water and sanitation, education, and health facilities; implement monitoring systems to ensure that human rights principles are respected and the rights of communities upheld; and establish explicit and transparent criteria for compensation;

(d) Ensure transparency, access to information and participation in all decisions regarding the extraction of natural resources; and conduct human rights impact assessments in relation to proposed and existing resource extraction projects;

(e) Promote a national debate around environmental sustainability and establish mechanisms for corporate accountability and remedies, in line with the Guiding Principles on Business and Human Rights.

Women

82. **The Special Rapporteur recommends that the Government:**

(a) Take all measures necessary to eliminate discrimination against women, including gender-based violence, prejudice and harmful traditional practices that undermine women's enjoyment of rights, in line with the obligations assumed by Mozambique under the Convention on the Elimination of All Forms of Discrimination against Women. In that effort, special attention should be paid to vulnerable or marginalized women, such as adolescent girls, women with disabilities, sex workers, HIV-positive women and women living in rural areas;

(b) Strengthen the participation of women in politics, ensuring that all women, including those who live in remote areas, have meaningful opportunities to participate fully in political life;

(c) Review, analyse and modify policies and programmes on poverty reduction to ensure that gender concerns, including the unequal distribution of unpaid care work, are taken into account in effective ways;

(d) Implement campaigns to raise awareness among women of their rights to property and land, particularly in rural areas;

(e) Ensure that all women have access to quality sexual and reproductive health services, including contraception, ensuring that geographical location and inability to pay are never barriers to access, and provide good quality family planning services that include education, counselling and advice, with a particular focus on young women, and rural and poor populations;

(f) Ensure that adequate training and sensitization is provided for law enforcement personnel and members of the judiciary in relation to gender-based violence; and implement measures to increase the prosecution rate of offenders;

(g) Develop a public policy for the protection of victims of gender-based violence, including the provision of more shelters, training of medical staff and better access to justice, together with legal aid and psychological counselling.

Children

83. **The Special Rapporteur recommends that the Government:**

(a) Continue to invest in essential services with the aim of eradicating stunting as part of the national five-year plan;

(b) Take immediate steps to reduce newborn and under-5 mortality, including building the capacity of health workers to provide good quality maternal and newborn health care; improve community-based services and referral systems, particularly in rural areas, and equip health facilities with the necessary supplies and equipment;

(c) Implement the recommendations of the Committee on the Rights of the Child that the traditional practice of early marriage should be abolished as being harmful and that children should be protected from all forms of sexual exploitation and sexual abuse;[123]

(d) Implement measures, including public education and awareness-raising campaigns, to protect children against any form of violence or abuse;

(e) Take immediate steps to implement zero-tolerance measures regarding the sexual abuse of children in schools, ensuring that perpetrators are brought to justice and psychological support is available for victims;

(f) Revise *despacho* 39/GM/2003 in line with the human rights obligations of Mozambique as a matter of priority;

(g) Implement measures to ensure that children from all sections of society are afforded equal opportunities for education; improve the overall quality of education by establishing a national framework for the assessment of learning achievement and by improving teacher training; and ensure that adequate infrastructure is in place in schools, including access to gender-segregated water and sanitation facilities;

(h) Ensure that the State budget reflects a commitment to children's rights by guaranteeing equitable and adequate allocation of resources for the provision of essential services for children such as health care and education.

Older persons

84. **The Special Rapporteur recommends that the Government:**

(a) Take steps to implement effectively the Law on the Promotion and Protection of Older People's Rights of 2013;

(b) Promote income generation activities for older people when possible or ensure the provision of social pensions, especially for women, and integrate older persons into adult literacy programmes;

(c) Ensure that vulnerable older people are aware of their rights to access public services and that a lack of documentation does not prevent them from accessing services;

(d) Ensure that those caring for adults or children living with HIV are provided with appropriate information, skills, equipment, psychosocial support and referrals to other services; and provide access to free medication and health care.

[123] See general comment No. 4 (2003) on adolescent health and development.

Persons with disabilities

85. **The Special Rapporteur recommends that the Government:**

(a) Ensure that national legislation is in line with the obligations of Mozambique under the Convention on the Rights of Persons with Disabilities;

(b) Adopt legislative provisions to ensure that children with disabilities, particularly those living in rural areas, can access inclusive, good quality and free primary and secondary education on an equal basis with others in their communities;

(c) Take appropriate measures to ensure that persons with disabilities have equal access to transportation, information and means of communication; and progressively remove barriers to accessibility from buildings, roads, transportation and other facilities, including schools, medical centres and workplaces, in accordance with article 9 of the Convention on the Rights of Persons with Disabilities;

(d) Improve health services for persons with disabilities, particularly community-based health services;

(e) Implement awareness-raising campaigns at the community level to eliminate discrimination against persons with disabilities, recognizing that they should have full enjoyment of all human rights and fundamental freedoms on an equal basis with everyone else in society.

Right to health

86. **The Special Rapporteur recommends that the Government:**

(a) Ensure that sufficient financial resources are allocated to health services within the national budget;

(b) Implement programmes to improve access to good quality health care in remote areas; ensure that health centres in those regions are well provided with skilled medical personnel, unexpired drugs, hospital equipment, safe and potable water and adequate sanitation; provide gender-sensitive care; and devise incentives to attract well-trained professional staff to rural areas;

(c) Ensure access to adequate sexual and reproductive health care and counselling for women and girls;

(d) Ensure universal and equal access to good quality maternal health care, including post-natal and emergency obstetric services; improve neonatal and nutrition services; and ensure the availability of skilled birth attendants, particularly in rural areas;

(e) Ensure the equitable distribution of trained staff between urban and rural areas and between the private and public sectors; and address inequalities in health-care provision as a matter of priority;

(f) Train health-care providers to ensure non-discrimination against and the right to confidentiality of persons living with HIV/AIDS.

Right to access to justice

87. **The Special Rapporteur recommends that Mozambique:**

(a) Ensure that judicial officials are equipped with adequate resources to provide legal advice to those living in rural areas, including through the introduction of outreach services;

(b) Tackle the capacity constraints of the legal aid centres by allocating sufficient resources to them and ensuring that lawyers are adequately trained and remunerated;

(c) Implement juvenile rehabilitation programmes and child-centred approaches to crime prevention that are aimed at addressing the underlying social causes of youth crime, in accordance with the United Nations Guidelines for the Prevention of Juvenile Delinquency; and ensure that specific pretrial detention facilities are made available for juveniles and are adequately equipped.

Right to adequate housing and access to land

88. **The Special Rapporteur recommends that the Government:**

(a) Ensure that the physical infrastructure required for housing to be considered adequate, including access to water, sanitation and electricity, is in place for all members of society, particularly the most vulnerable;

(b) Implement the provisions of the Land Law of 1997 and take measures to eliminate the sociocultural barriers currently preventing women from exercising their right to land;

(c) Increase awareness of women's inheritance and property rights through public awareness campaigns, in urban and peri-urban areas and in rural communities.

Right to social security

89. **The Special Rapporteur recommends that the Government:**

(a) Work with national and international partners to implement the reforms outlined in the Strategic Operational Plan of 2011, allocating adequate resources for successful implementation;

(b) Improve the identification of eligible beneficiaries and re-evaluate eligibility criteria, to ensure that existing social security schemes reach the poorest and most disadvantaged sectors of society, including those living in rural areas, persons with disabilities, vulnerable children and chronically ill persons; and implement measures to ensure that the targeting of beneficiaries is transparent and that corruption is eradicated at all levels within the system;

(c) Remove all administrative barriers currently limiting the coverage of existing grants, particularly by avoiding unnecessary documentation requirements and simplifying procedures;

(d) Regularly adjust the value of the existing grants according to the inflation rate and regularly review the amount to assess whether it should be raised in real terms;

(e) Consolidate existing social protection schemes, to diminish fragmentation and bureaucratic procedures;

(f) Ensure that cash transfers are complemented by broader poverty alleviation policies, in particular policies aimed at improving access to public services, agricultural productivity and job opportunities;

(g) Work towards progressively implementing a social protection floor for all, as outlined in International Labour Organization recommendation No. 202 (2012).

International assistance and cooperation

90. **The international community should continue to provide assistance to Mozambique, including financial and technical assistance, and support the country's climate change adaptation efforts through increased financial and technical assistance, beyond pre-existing official development assistance commitments;**

91. **The Government of Mozambique should ensure that cooperation with international partners is open and transparent, and implement its zero-tolerance measures to eradicate corruption at all levels.**